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**In the Supreme Court of the  
United States**

OCTOBER TERM, 1925

ORIGINAL NO. 19—IN EQUITY

STATE OF MICHIGAN,	}
Plaintiff,	
<i>vs.</i>	
STATE OF WISCONSIN,	
Defendant.	}

**BRIEF FOR THE STATE OF MICHIGAN**

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*Left*  
*Mr. M. R. Sawyer*  
*10.27-1931*

## GENERAL INDEX

	Page
Acquiescence .....	110
Admission of Michigan .....	4, 6, 7, 8, 44
Admission of Wisconsin .....	15, 55, 107
Appendix 1—exhibits printed in this brief.....	130
Appendix 2—plaintiffs' exhibits, showing relevancy	133
Appendix 3—Partial list defendants' exhibits....	191
Area before Congressional Action.....	2, 38
Attorney General Bird .....	18, 59, 103
Argument .....	37
Boundary Commission .....	19, 59, 76
Boundary—Michigan grant .....	8
Boundary—Wisconsin's grant .....	15
Burr Maps .....	5, 9, 43, 47, 48
Burt's Survey .....	16, 57
Cannon, George .....	17, 58
Constitutions—Michigan .....	100, 102
Cram—Capt.—instructions .....	11, 50, 53
Cram's Errors .....	73, 54, 52, 51, 49, 17, 12
Cram's Reports .....	12, 49
Davis, J. B. ....	18, 59, 103, 105
Drainage areas—volume—	
Montreal .....	20, 21, 62, 63, 64, 68
"Gogogashgun" .....	71, 23
Green Bay Sector .....	33, 112
Historical background .....	2, 38
Houghton, Douglas .....	13, 15, 53
Islands in Menominee river.....	25 to 32
Judson map .....	11, 50
"Katikitegon"—old planting grounds.....	2, 39, 72
Lac Vieux Desert .....	46, 71, 94, 95

	Page
"Les Lake Vieux Desert".	10, 43, 44, 47, 48, 74, 94, 95
Lyon, Lucius .....	6, 10, 46, 47, 48
Menominee—Brule Sector .....	24, 77, 112
Michigan—engineers—report .....	20, 25, 61
Michigan—territory of .....	3, 41
Mitchell Map .....	3, 9, 40
Montreal—Vieux Desert Sector.....	19, 58, 61, 111
Navigation aids .....	34, 35, 83, 84, 85, 92
Northwest territory .....	3, 40
Plaintiffs' theory .....	1
Pine Lake .....	14
Porte des Morte .....	
.....	33, 34, 35, 36, 49, 78, 79, 86, 87, 96, 97, 98
Reconciliation .....	99
Schoolcraft, Henry .....	8, 43, 45, 46, 73
Statement of facts .....	1
Strawberry Channel.....	33, 34, 49, 78, 79, 89, 96, 97, 98
Tanner map .....	10, 99
Taxation .....	17, 57
"Toledo war" .....	4, 42
"Vieux Desert"—old planting grounds.....	2, 39
White, Peter .....	17, 18, 19, 58
Wisconsin, territory of .....	4, 41



## STATUTES AND CONSTITUTIONS

	Page
2 U. S. Statutes at L. 309—Jan. 11—1805	
Creating territory of Michigan.....	41
3 U. S. Statutes at L. 428—Apr. 18—1818	
Adding to territory of Michigan.....	4
4 U. S. Statutes at L. 701—June 28—1834	
Adding to territory of Michigan.....	4
5 U. S. Statutes at L. 49—June 15—1836	
Michigan Enabling Act .....	6
5 U. S. Statutes at L. 144—Jan. 26—1837	
Admitting Michigan as a State .....	42
9 U. S. Statutes at L. 56—Aug. 6—1846	
Wisconsin enabling act .....	15-55
9 U. S. Statutes at L. 233, May 29—1848.....	16
Constitution of Michigan 1850.....	101
Constitution of Michigan 1909.....	18, 102
Act 15 P. A. of Michigan 1919	
Creating boundary Com. (Pltfs. ex. 106)	19
Resolution, Mich. Legislatures	
In re: Investigation by Atty. Gen.	
(Defts. ex. 380) .....	103

## TABLE OF CASES

	Page
1. Doddridge vs. Thompson, 9 Wheaton 476....	123
2. Louisiana vs. Mississippi, 202 U. S. 1.....	114
3. New Mexico vs. Colorado, 267 U. S. 30.....	113
4. Pence vs. Langdon, 99 U. S. 578.....	111
5. Reynolds vs. McArthur, 2 Peters 417.....	125
6. Rhode Island vs. Massachusetts, 4 Howard 591 .....	115-114
7. U. S. vs. State Investment Co., 264 U. S. 206..	113
8. Virginia vs. Tennessee, 148 U. S. 503.....	114

# OUTLINE OF FACTS AND ARGUMENT

## STATEMENT OF FACTS

	Statement of Facts Page	Argument Page
I Historical Background		
A The Area Before Congressional Act .....	2	38
Appendix A .....	2	
B Subdivision by Congress.....	3	41
1 Territory of Michigan....	3	41
2 Territory of Wisconsin....	4	41
3 Admission of Michigan...	4	42
a Toledo War .....	4	42
b Bill of 1834 .....	5	42
c Thomas Bill and Report 380 .....	5	43
d Michigan Enabling Act S 177 .....	6	44
C Congressional Knowledge and Maps of the Hour.....	8	46
1 Schoolcraft .....	8	46
2 Mitchell Map Exhibit 1...	9	40
3 Burr Map March 2, 1836 Exhibits 179-9 .....	9	45
4 Burr Map March 11, 1836, Exhibits 6-7 .....	9	47
5 Smith Map, Exhibit 59....	11	140
6 Judson Map, Exhibit 175..	11	50
D Cram's Error .....	11	49
1 Causes .....	11	49

	Statement of Facts Page	Argument Page
2 Results .....	12	52
E Admission of Wisconsin and Sub- sequent Developments .....	15	55
1 Enabling Act .....	15	55
2 Burt's Survey .....	16	57
3 Taxation .....	17	57
4 Discovery of Error as to Montreal .....	17	58
5 Michigan Constitution of 1909 .....	18	102
II The Montreal—Vieux Desert Sector		
A What is the main channel of River Montreal .....	19	61
1 Report of Michigan En- gineers .....	20	61
2 Volume .....	20	64
3 Pumpage .....	22	69
4 Tradition .....	23	71
B What Lake is "Lake of the Desert"		71
III The Menominee—Brule Sector		
A General Conditions .....	24	77
Island No. 1 Brule Island .....	25	
No. 2 Grand Island .....	26	
No. 5 Chippewa—Holmes —Miscauno ...	27	
No. 7 Wait's Island .....	28	
No. 9 Sixty Islands .....	29	
No. 12 Baker's Island ...	31	
No. 18 Twin Islands .....	31	
No. 21 Sugar Island .....	32	

	Statement of Facts Page	Argument Page
IV The Green Bay Sector		
A General conditions .....	33	78
B Porte des Morte and Strawberry —or Rock Island and West- ern passage .....	34	80
C Tradition .....	35	85
V Appendix “A”		
Exhibits showing “Lake of the Desert” .....		94
VI Appendix “B”		
Exhibits showing “Strawberry” pas- sage and “Porte des Morte” were the <i>most usual ship channel</i> .....		96
VII Reconciliation .....		99
VIII Michigan’s Constitutions		
IX The Davis report .....		103
X Michigan had the right to be at ease.		107
XI Acquiescence .....		110
XII Conclusion .....		126
XIII Exhibits printed in this brief....		130
XIV Plaintiff’s exhibits—showing their relevancy .....		133
XV Defendant’s exhibits—supporting plaintiffs case .....		191



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**BRIEF FOR THE STATE OF MICHIGAN**

STATEMENT OF FACTS.

Plaintiff's Theory.

The Plaintiff, State of Michigan, was admitted by Act of Congress June 13, 1836, granting to Michigan jurisdiction over all the land within certain definite well defined boundaries.

The engineer entrusted with the survey of the petition in dispute, erroneously reported that it was an impossible line. The defendant, State of Wisconsin, was admitted with a boundary based upon this erroneous report and supposed to be as nearly as possible in accord with the Michigan Grant and conditioned on ratification by Michigan.

A Commission appointed by the State of Michigan, after exhaustive search, gathered complete information on the subject and disclosed the engineer's error and this action is brought to recover the land within that original grant.

## 1. HISTORICAL BACKGROUND.

### A. The area before Congressional action.

The boundary now in dispute is determined principally in relation to the following geographic features. It is a line between Lake Superior and Lake Michigan. Defined by the main channels of the Montreal River discharging into Lake Superior, and the Menominee River discharging into Green Bay, and the most usual ship channel of that Bay to Lake Michigan.

It is a natural boundary with the exception of the land line connecting the Montreal and Menominee Rivers.

Both these rivers rise in Lakes upon the High Plateau country now known as the "Land o' Lakes." This plateau was well wooded—studded with innumerable lakes draining variously into Lake Superior, Lake Michigan and the Mississippi. This "height of land" was the district in which the Sioux and Dakota had lived and cultivated small patches of land. The Sioux and Dakota were driven out by the Ojibway who had been driven westward by the Iroquois.—Testimony Jim Bell, page 457. On most of the early maps either one Lake or a group of Lakes is shown at this approximate location variously denominated L. Vieux Desert, or Lakes of the Desert, or Katikitegon.

### Appendix "A".

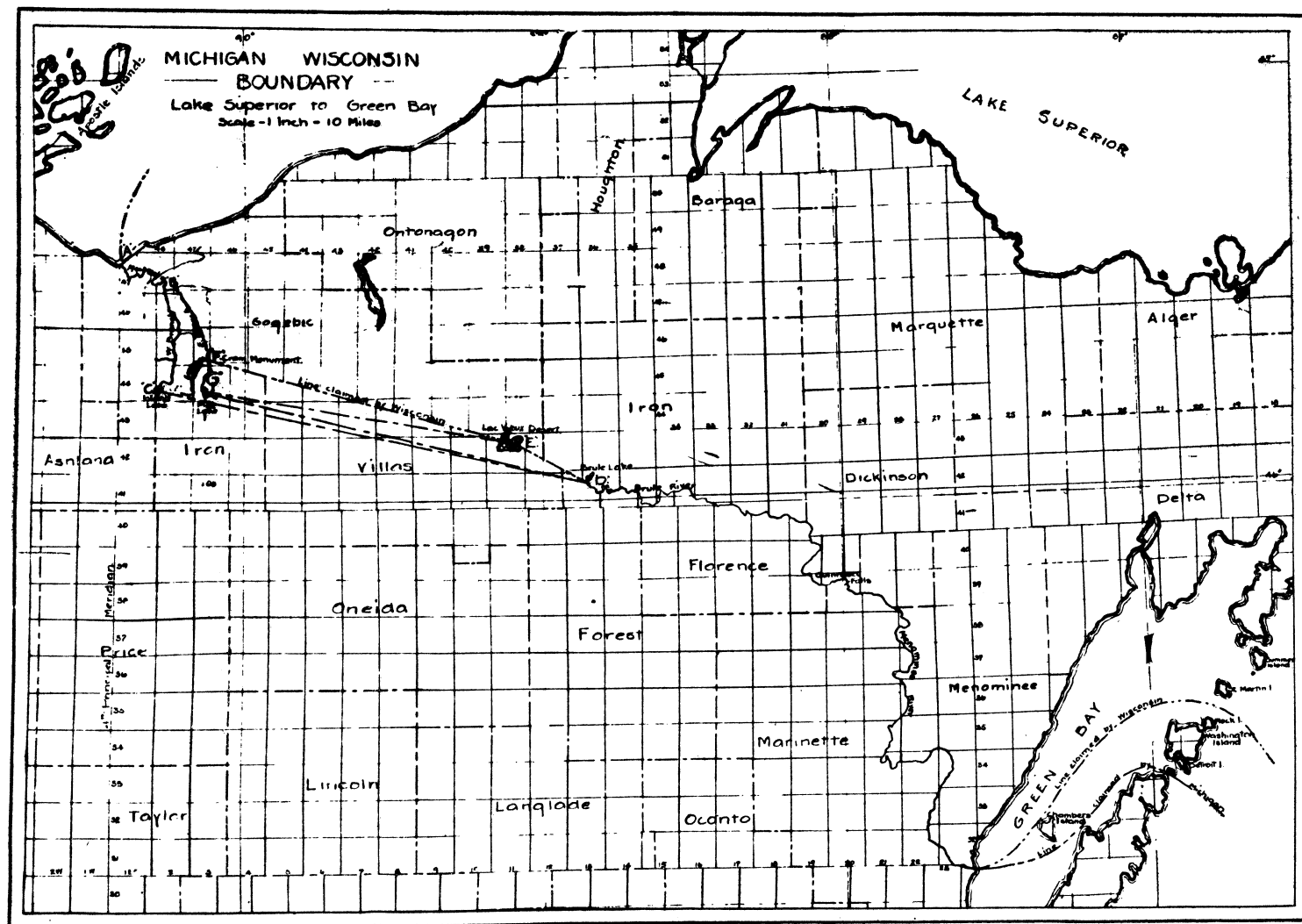
Katikitegon is Ojibway for old planting grounds.

Vieux Desert is French for the same.

Test. of Fr. Gagnieur, page 84-85.

Exhibit 125.







Prior to 1836 there were no white settlements nearer than Green Bay or Mackinac and the country was unknown except to the fur traders and explorers and very inaccurately mapped.

This area was a part of the Northwest territory organized by Congress in 1805.

It will be remembered that Virginia released her claims to this territory upon conditions that not to exceed five states would be formed therefrom, and not to exceed two, from the territory north of an east and west line drawn thru the southern extremity of Lake Michigan. This concerned the balance in Congress on the slavery question and indirectly affected the boundaries of the states later formed.

At this time Congress had before it the Mitchell map, Plaintiff's Exhibit 1, on which the southern extremity of Lake Michigan was given with a north latitude exceeding that of the international boundary in Lake Erie, in which respect the map was in error.

#### B. Sub-division by Congress.

Prior to 1836 Congress had subdivided the northwest territory by admitting three states, Ohio, Indiana and Illinois, formed, supposedly, from that portion of the Northwest territory South of the East and West line mentioned in the ordinance of 1805. The area North of this line being all included within the Territory of Michigan as early as 1818.

##### 1. Territory of Michigan.

Organized in 1805, (U. S. St. at Large, Vol. 2, page 309) comprising that portion of the Northwest territory lying North of the East and West line above referred to, and East of a North and South line passing

thru the said southern extremity of Lake Michigan.

The balance of the Northwest Territory, North of the East and West line was added in 1818. (U. S. St. at Large, Vol. 3, page 431.)

In 1834 all territory west of the Mississippi and north of the State of Missouri was added to the territory of Michigan. (U. S. St. at Large, Vol. 4, p. 701.)

## 2. Territory of Wisconsin.

This territory was organized by Act of Congress April 20, 1836, comprising a portion of the territory of Michigan, the boundary on the north being described practically the same as in the Michigan Enabling Act, then under consideration, except in reverse order.

## 3. Admission of Michigan.

### a. (Toledo War).

The admission of the State of Michigan came at the conclusion of a four year dispute with the State of Ohio, commonly known as the Toledo war. Conditions had reached such a stage that the President had sent representatives to the scene and ordered out troops to prevent disturbances, and the Governors of the respective states, Michigan and Ohio, had authorized military men to use the power of either state. There were some riots, but little or no bloodshed and Ohio won the contest in the Committees of Congress.

In 1834, a Mr. Preston, of South Carolina, at a Senate Committee meeting, suggested that Ohio be granted its claim and that in return for the loss of land to Michigan on the south, that it be given so much of the territory west of the lake as lay north and east of the Menominee and Montreal rivers. This is the

first reference to the boundary which is now in dispute, and it is the line which was finally agreed upon in the Committee after Michigan had sent its delegates to Congress and finally conceded the fight to Ohio for the purpose of gaining admission.

b. Bill of 1834.

In 1834 a bill was before Congress for the admission of Michigan which has no value in relation to the present dispute because in that Act the western boundary was defined the same as in the original Michigan Territorial Act, to-wit, a line drawn due north from the southern extremity of Lake Michigan.

c. Thomas Bill and Report 380.

In the 24th Congress, 1st Session, in 1836, the Thomas bill contained the first definition of the present boundary, the language being practically identical with the present Act. This bill was introduced in the House by Mr. Thomas and was known as H. R. 382 and was the subject of Report 380. It was a Bill to define the Northern Boundary of the State of Ohio and provide for the admission of Michigan on certain conditions, and made its appearance March 22nd. That report favors the passage of that bill compromising the question as suggested by Mr. Preston in 1834. The report also shows that the Committee had given consideration to the southern boundary and learned the unreliability of the Mitchell map, but it does not in any way indicate where the Committee obtained the information for defining the now disputed boundary, and attached thereto is the Burr map of March 2, 1836, of which we will speak later. The Thomas Bill, H. R. 382, reported by Judiciary Committee March 2nd, was

committed to the Committee of the Whole and a substitute was offered by Mr. Webster changing the boundary to accord with the bill of 1834, the substitute being read twice on March 2nd was committed to the Committee of the Whole also on April 15th, from which neither of the bills were ever reported.

d. The Michigan Enabling Act, S. 177.

S. 177 which finally became the Michigan Enabling Act, was introduced in the Senate March 22nd, by Mr. Benton from the Select Committee appointed to act upon that portion of the President's message to Congress which dealt with the necessity for action in relation to the Ohio and Michigan dispute. No Committee report was ever made in connection with this bill by the Senate Committee, although there is ample evidence that it was considered in the Committee. In letters of Lucius Lyon he repeatedly speaks of attending Senate Committee meetings and of the final agreement reached in Committee for the compromise. This at a joint meeting of the two select Committees of the Senate on the admission of Michigan and Arkansas, the Judiciary Committee of the Senate and the Judiciary and Territorial Committees of the House, the latter Committee being the one which received the map, Exhibit 6, March 11th, and Mr. Casey a member. This bill was debated on the floor of the Senate March 29th, 30th and 31st, and April 1st, and passed the Senate April 2nd.

On March 30th, a Mr. Ewing of Ohio, proposed an amendment in regard to that portion of the boundary now in dispute, which would have brought the boundary along the Huron and the Menominee rivers, the proposed amendment being unsuccessful.

On April 4th, S 177 was received in the House after passing the Senate. It lay upon the table until April 14th when Mr. Thomas made an unsuccessful attempt to make it a special order.

The attempt was renewed by Mr. Storrer on April 20th and it was then read a first and second time, and a motion made to commit to Committee of the Whole. Upon this motion a dispute arose as to whether S 177 or S 7 had priority, (S 7 was another bill for the same purpose wherein the boundary was defined as in the Act of 1834) the Speaker declared S 177 under consideration, and an appeal from the Chair was taken. Upon a previous question being moved and debated the Session adjourned.

On April 27th, the appeal from the Chair and the motion to commit to Committee of the Whole were withdrawn. Mr. Thomas, the author of the Thomas bill, then made an unsuccessful attempt to advance the consideration of S 7, S 177 and S 178 the latter being a bill dealing with public lands in the proposed state.

On March 31st a Mr. McComas attempted to advance consideration of S 177.

On June 5th, S 7 was made a special order and,

On June 8th, S 7 was tabled, and S 177 and S 178 were committed to Committee of the Whole where they were considered on June 8th.

On Jun 9th, *Mr. Casey* was present in the House and made a motion in regard to matters then before the Committee on Public Lands, S 177 and S 178 were being considered by the House in Committee of the Whole which arose twice because of no quorum, and following a call of the House again resolved itself into a Committee of the Whole and reported S 177 and S

178 without amendment, Mr. Casey being present at the call of the House.

On June 13th, Mr. Vinton attempted to amend the bill to make the boundary unconditional, and on the same day John Quincy Adams moved to amend the bill to make the boundary conform with the original Michigan Territorial Act. A call of the House ensued and the bill was ordered to a third reading and after considerable debate, mostly on the subject of slavery, S 177 was passed by the House and later signed by the President became the Act under which Michigan became a state. The language of the act in relation to the disputed boundary is:

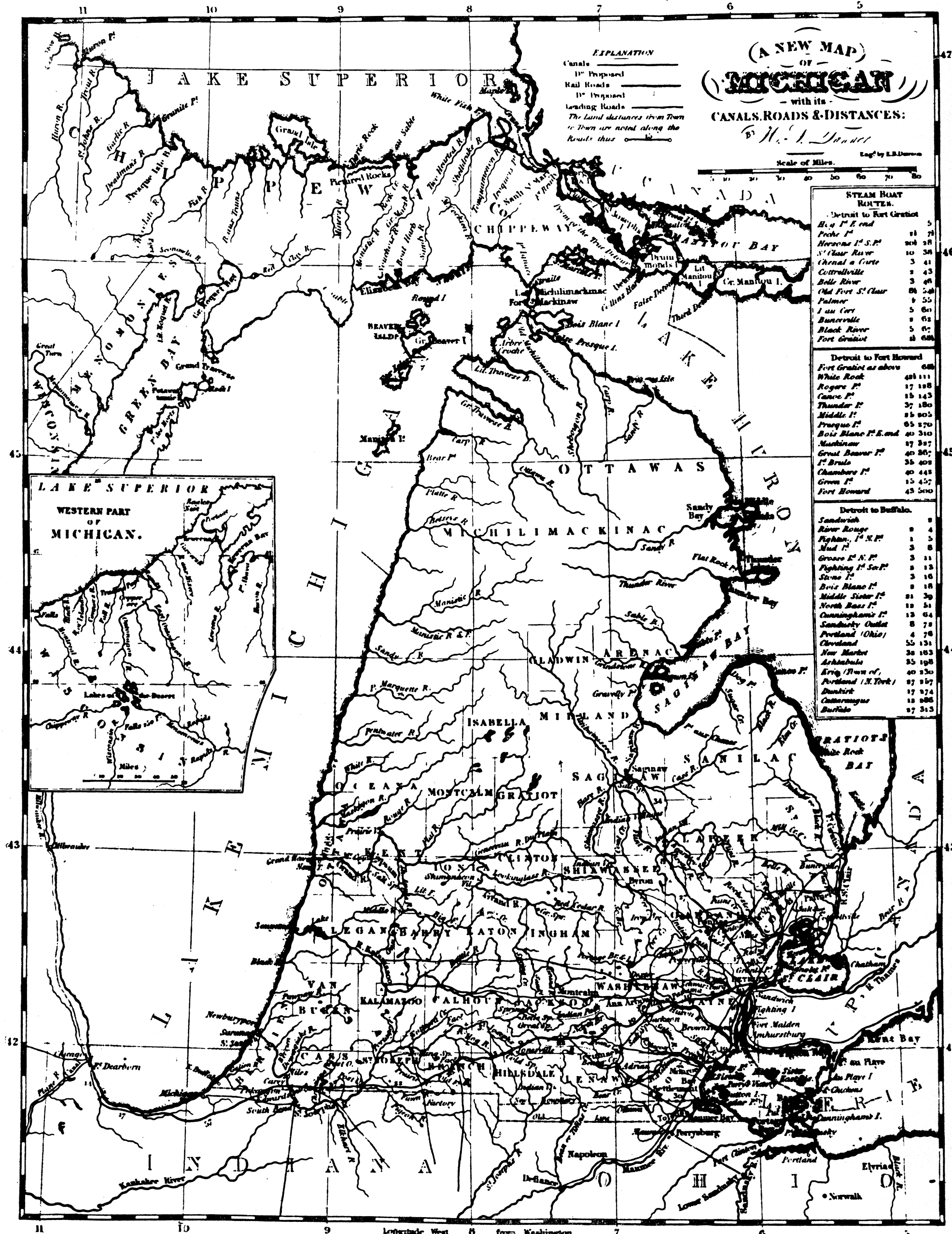
“From the mouth of the Montreal river of Lake Superior; thence through the middle of the main channel of said river Montreal to the middle of the Lake of the Desert; thence in a direct line to the nearest headwater of the Menominee river; thence through the middle of that fork of said river first touched by said line, to the main channel of the said Menominee river; thence down the center of the main channel of the same, to the center of the most usual ship channel of Green Bay of Lake Michigan; thence through the center of the most usual ship channel of Green Bay to the center of Lake Michiaan.”

C. Congressional knowledge and maps of the hour.

1. Schoolcraft.

During the spring of 1836 Henry Schoolcraft—Indian agent at Mackinac—a man who was familiar with the district thru which this line passed, was called to Washington to impart to the Senate Committee considering the Michigan Enabling Act his knowledge in regard to that region.





**EXPLANATION**  
Canals  
11" Proposed  
Rail Roads  
11" Proposed  
Leading Roads  
The Land distances from them  
if then are noted along the  
Roads thus

**(A NEW MAP)**  
**OF**  
**MICHIGAN**  
- with its -  
**CANALS, ROADS & DISTANCES:**  
By *H. I. Dutton*  
Eng'd by L.B. Dutton  
Scale of Miles.  
0 10 20 30 40 50 60 70 80

STEAM BOAT ROUTES.	
Detroit to Fort Gratiot	
Bois Blanc	5
Proche	11 70
Huron	108 38
S. Clair River	10 34
Chenal a Cote	3 41
Cottrellville	3 43
Bois River	3 46
Old Fort S. Clair	26 54
Palmer	1 55
1 au Cor	5 60
Bunker	1 62
Black River	5 67
Fort Gratiot	4 68
Detroit to Fort Howard	
Fort Gratiot as above	68
White Rock	48 111
Rogers	17 128
Canoe	15 143
Thunder	37 180
Middle	25 205
Prague	65 270
Bois Blanc	40 310
Manitou	17 327
Grand Beaver	40 367
1 <sup>st</sup> Brule	35 403
Chambers	40 443
Green	15 457
Fort Howard	45 500
Detroit to Buffalo.	
Sandwich	8
River Rouge	8 4
Fighting	1 5
Mud	3 8
Groves	3 11
Fighting	3 13
Stone	3 16
Bois Blanc	8 18
Middle Sister	31 29
North Bass	18 51
Cunningham's	13 64
Sandwich Outlet	8 72
Portland (Ohio)	4 78
Cleveland	55 131
New Market	38 163
Ashabula	25 198
Erie (Town of)	40 230
Portland (N. York)	27 257
Dunkirk	17 274
Cattaraugus	18 286
Buffalo	27 315

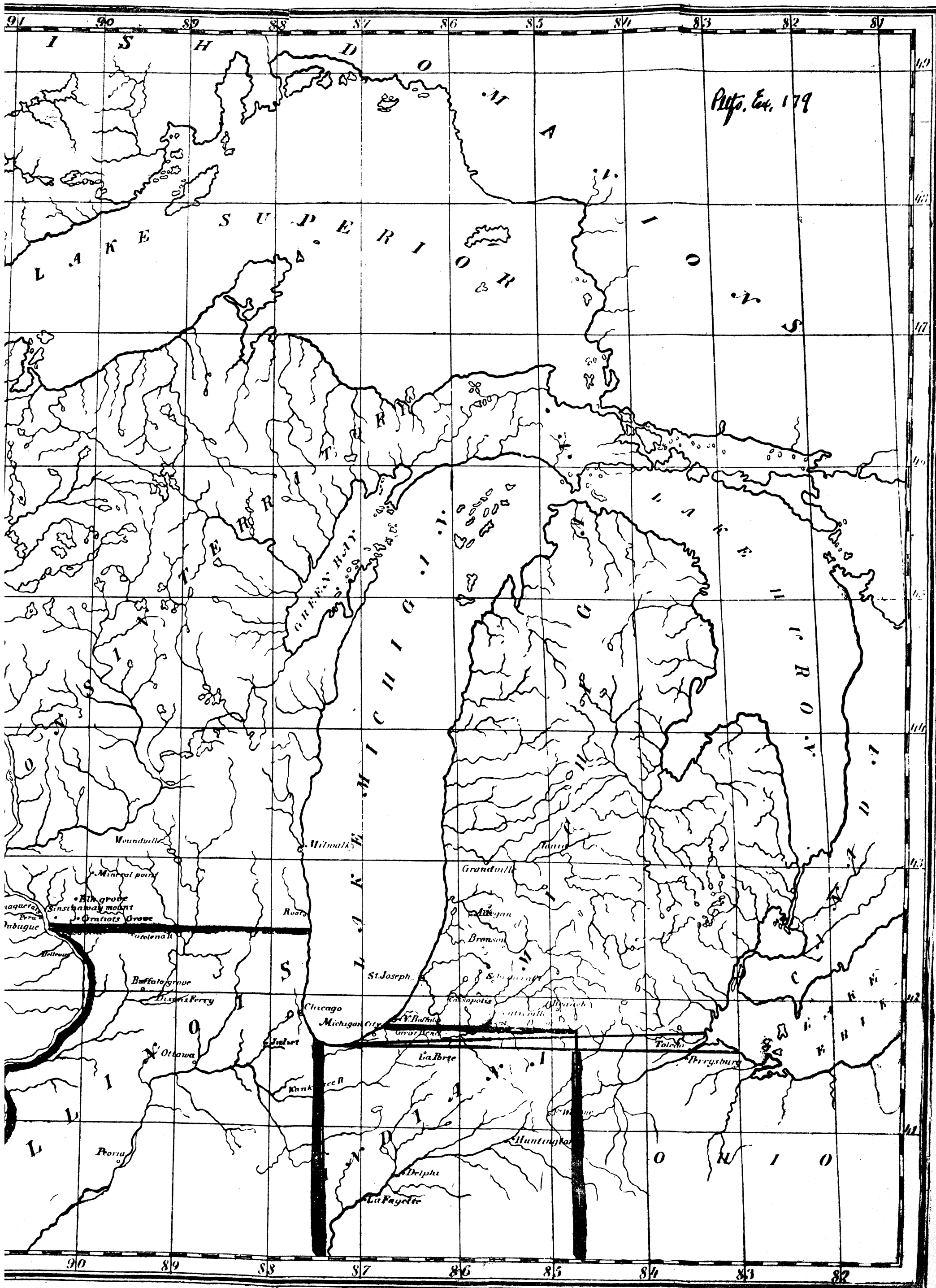






**MAP**  
of the  
Northern parts  
of  
**OHIO, INDIANA**  
and  
**ILLINOIS**  
with  
*Michigan*  
and that part of  
the  
**WISCONSIN TERRITORY**  
lying east of the  
**MISSISSIPPI RIVER**

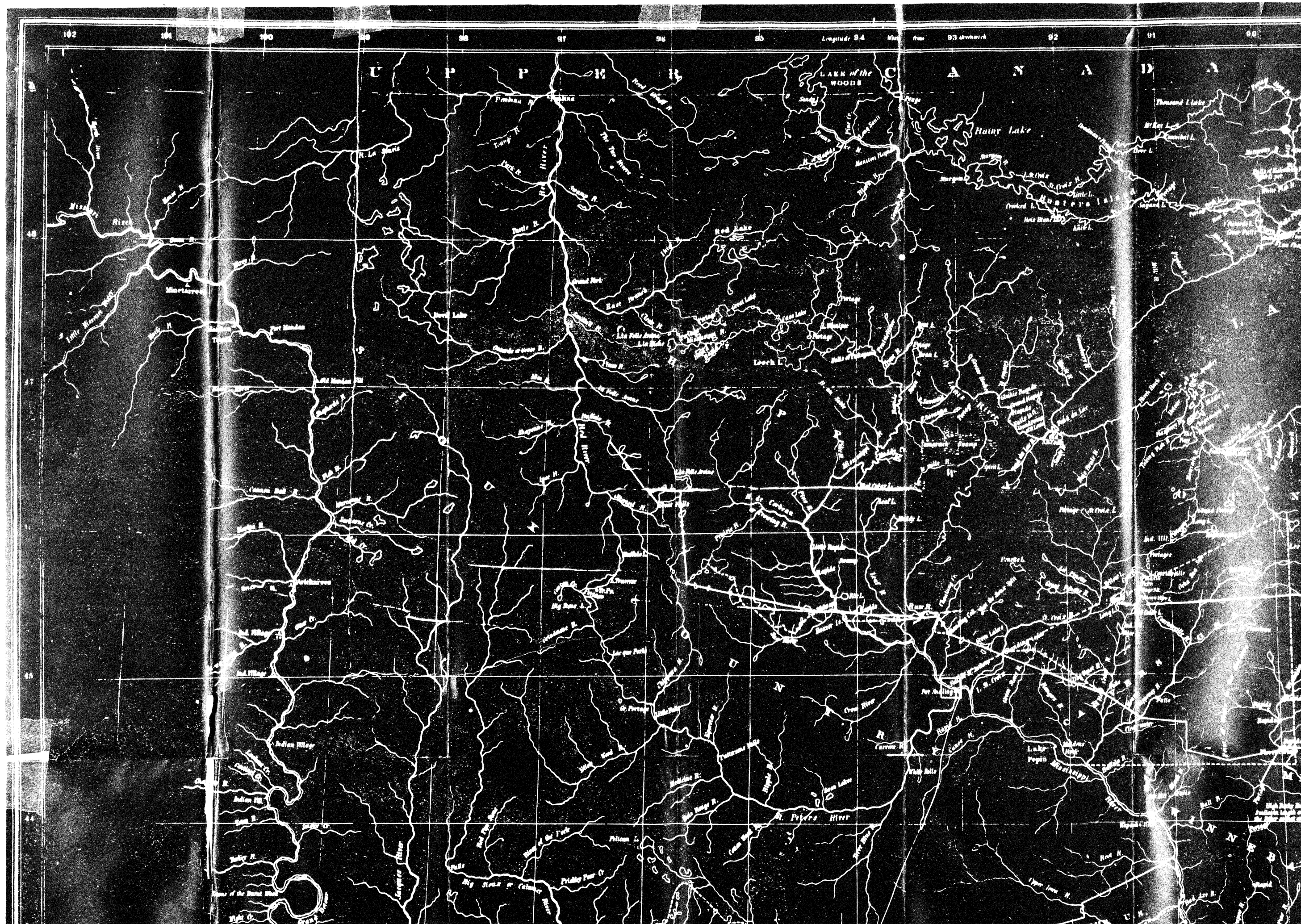
*Plat 4. 179*



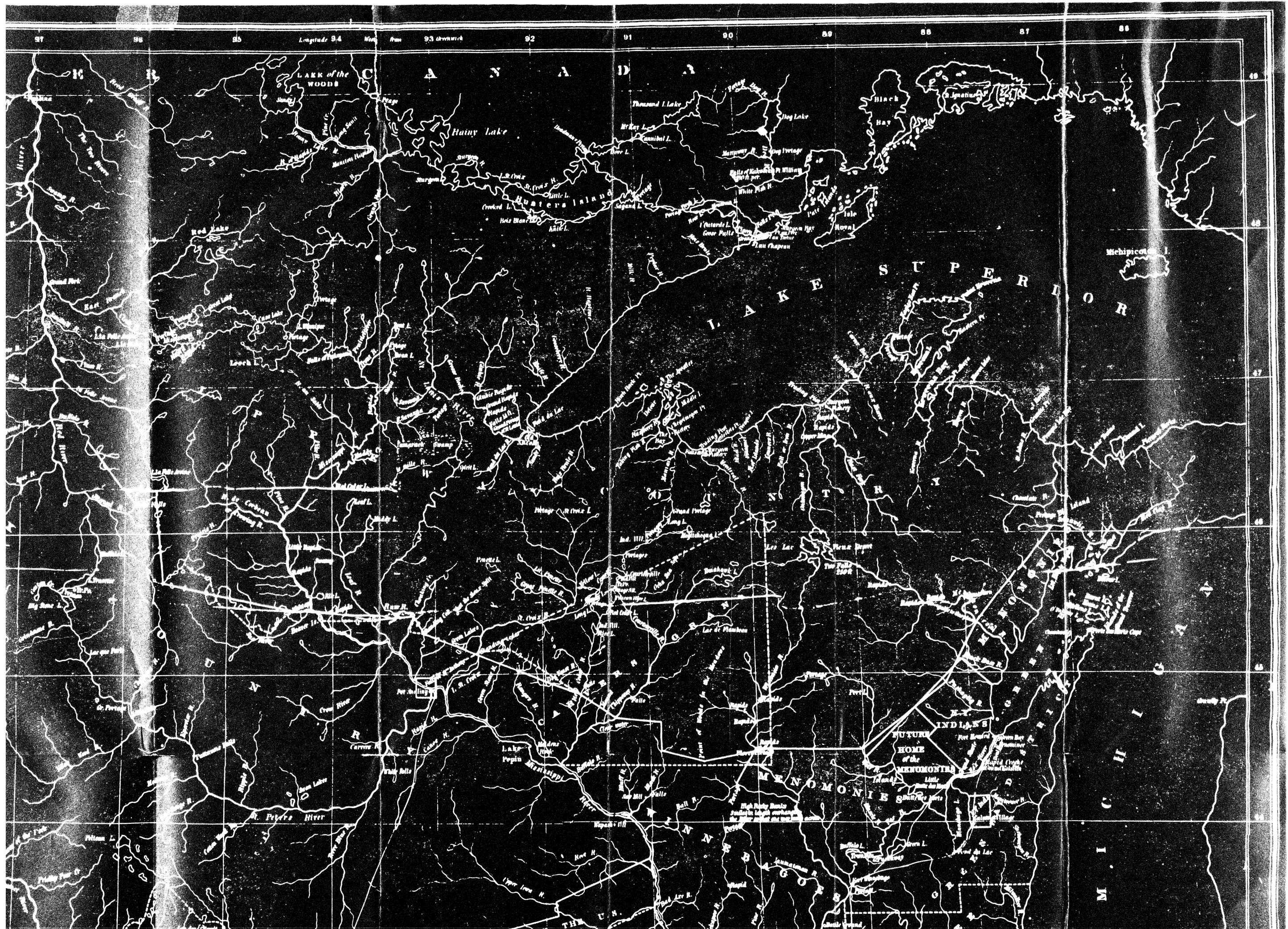










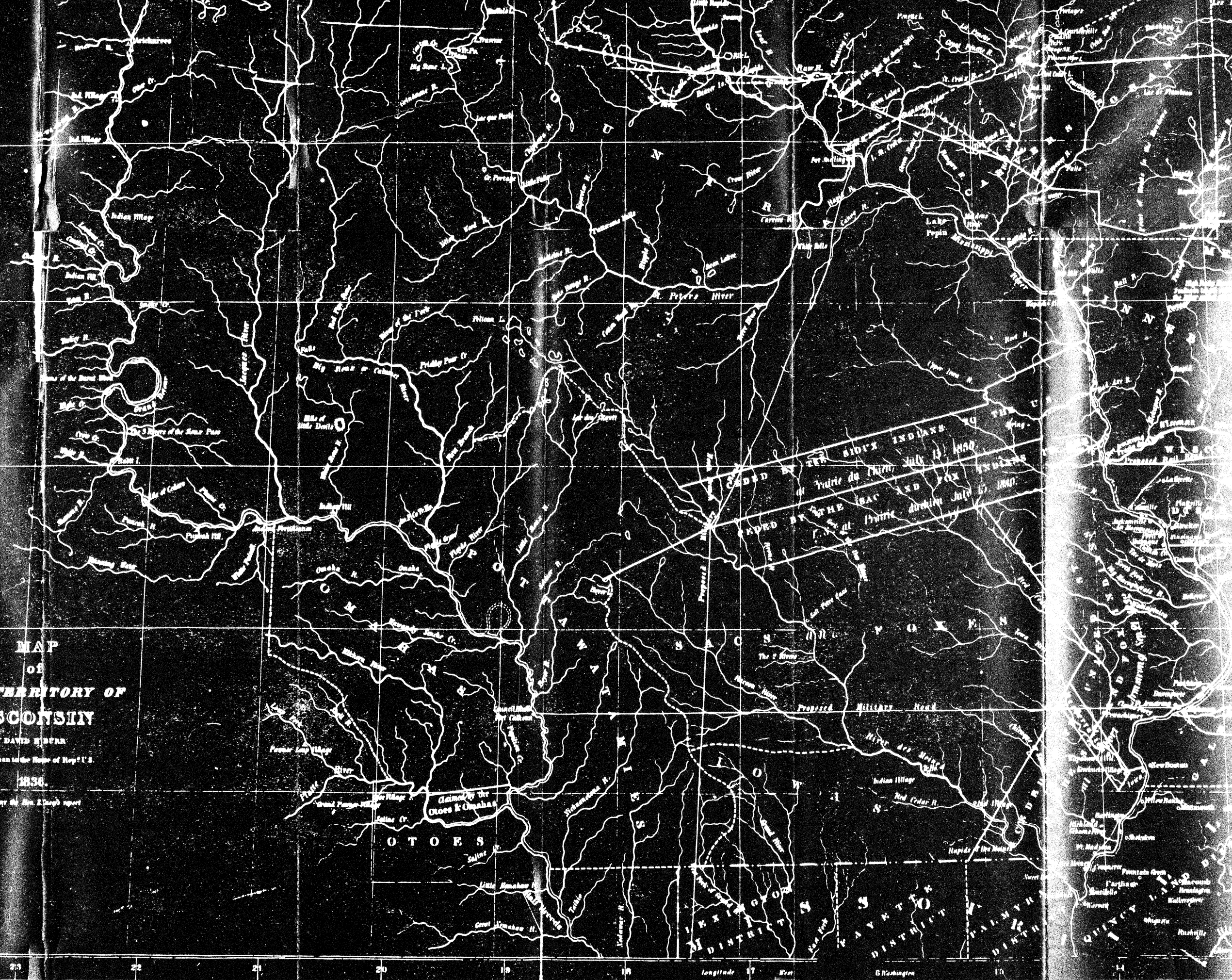




MAP  
of  
**THE TERRITORY OF  
WISCONSIN**  
BY DAVID E. BURR  
Draughtsman to the House of Reps.

1836.

In company with Gen. L. Cass's report



Claimed by the  
Ojibwa & Menominee

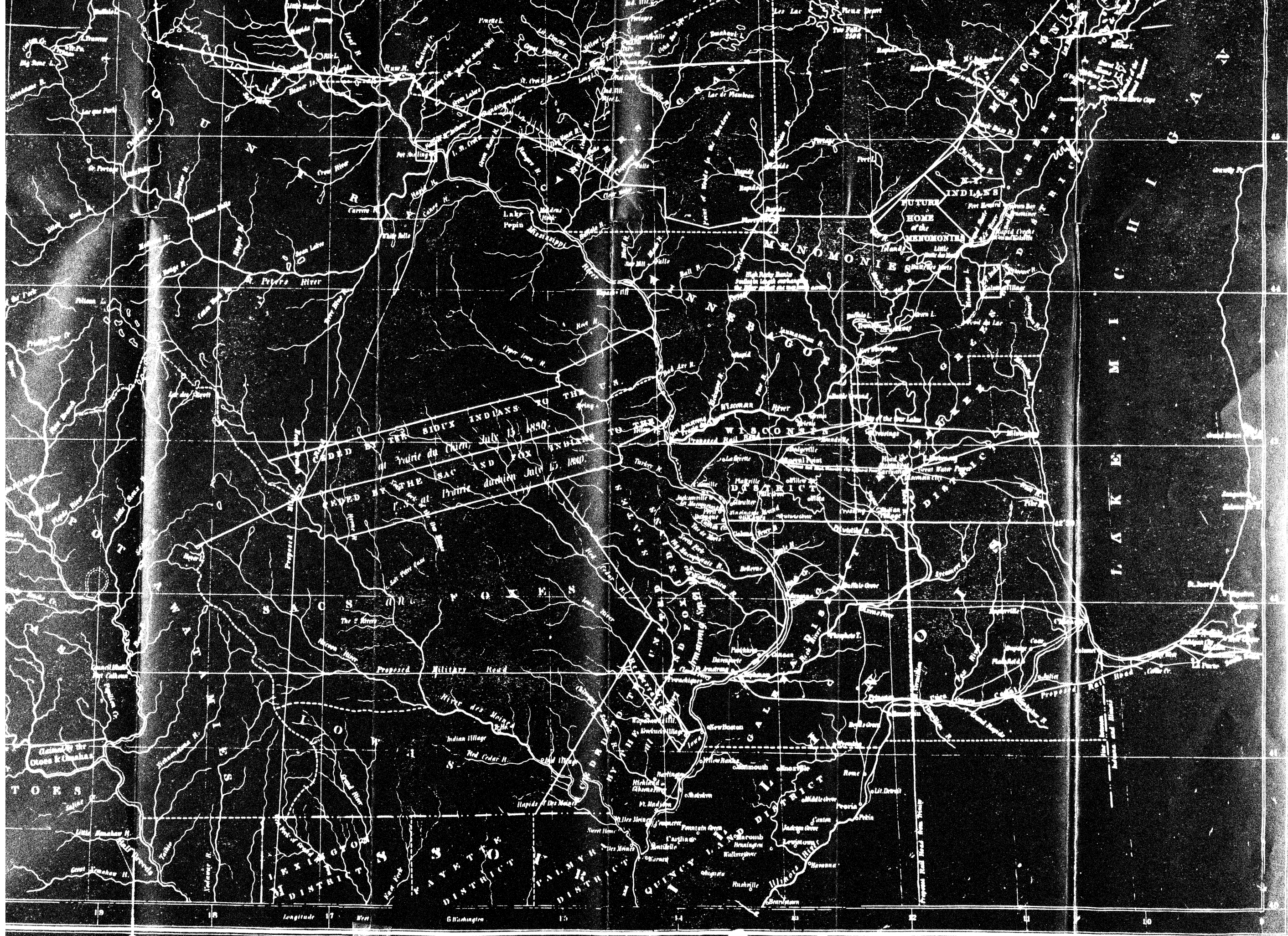
OTOES

Longitude 17 West

G. Washington

14





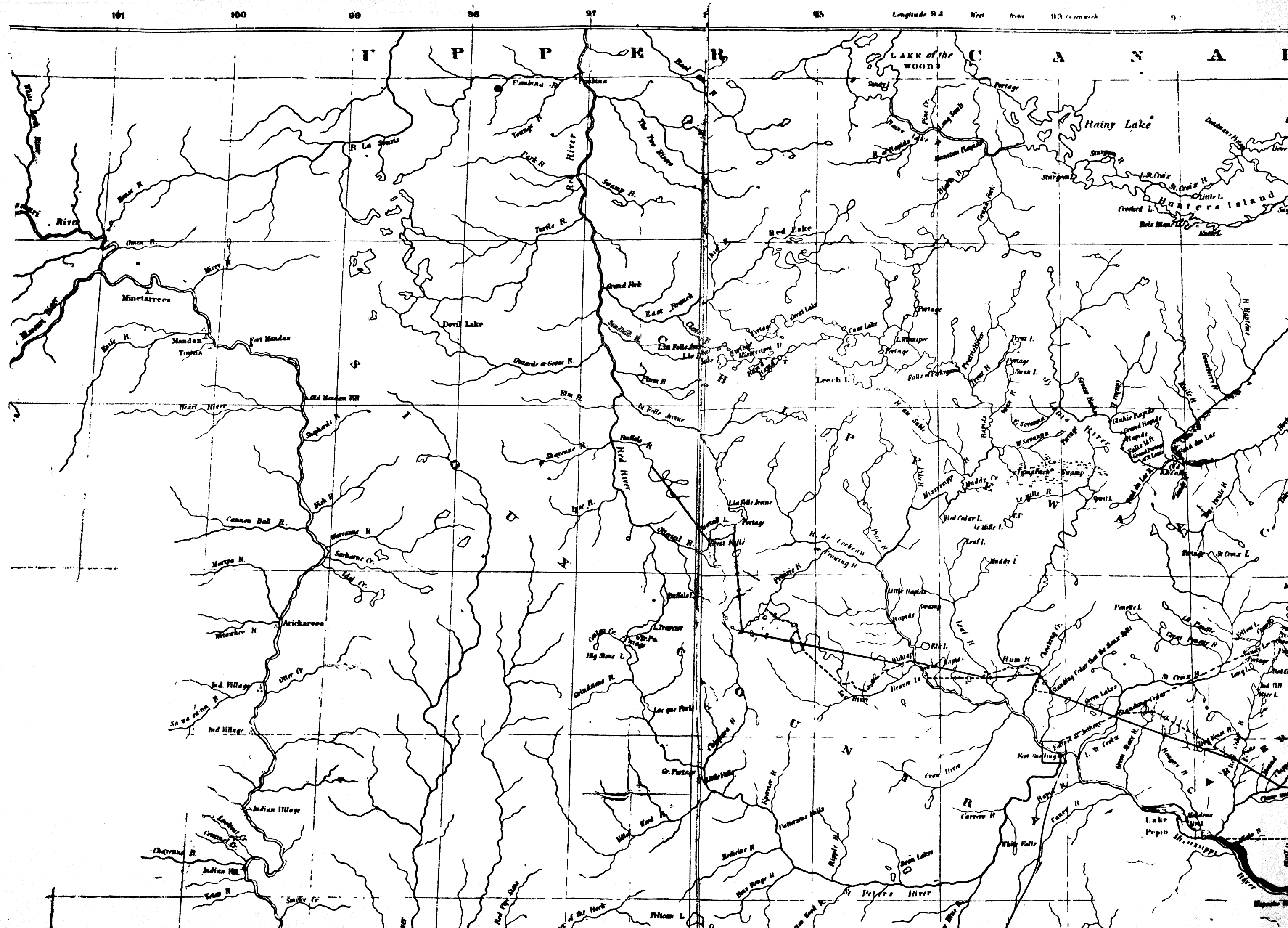


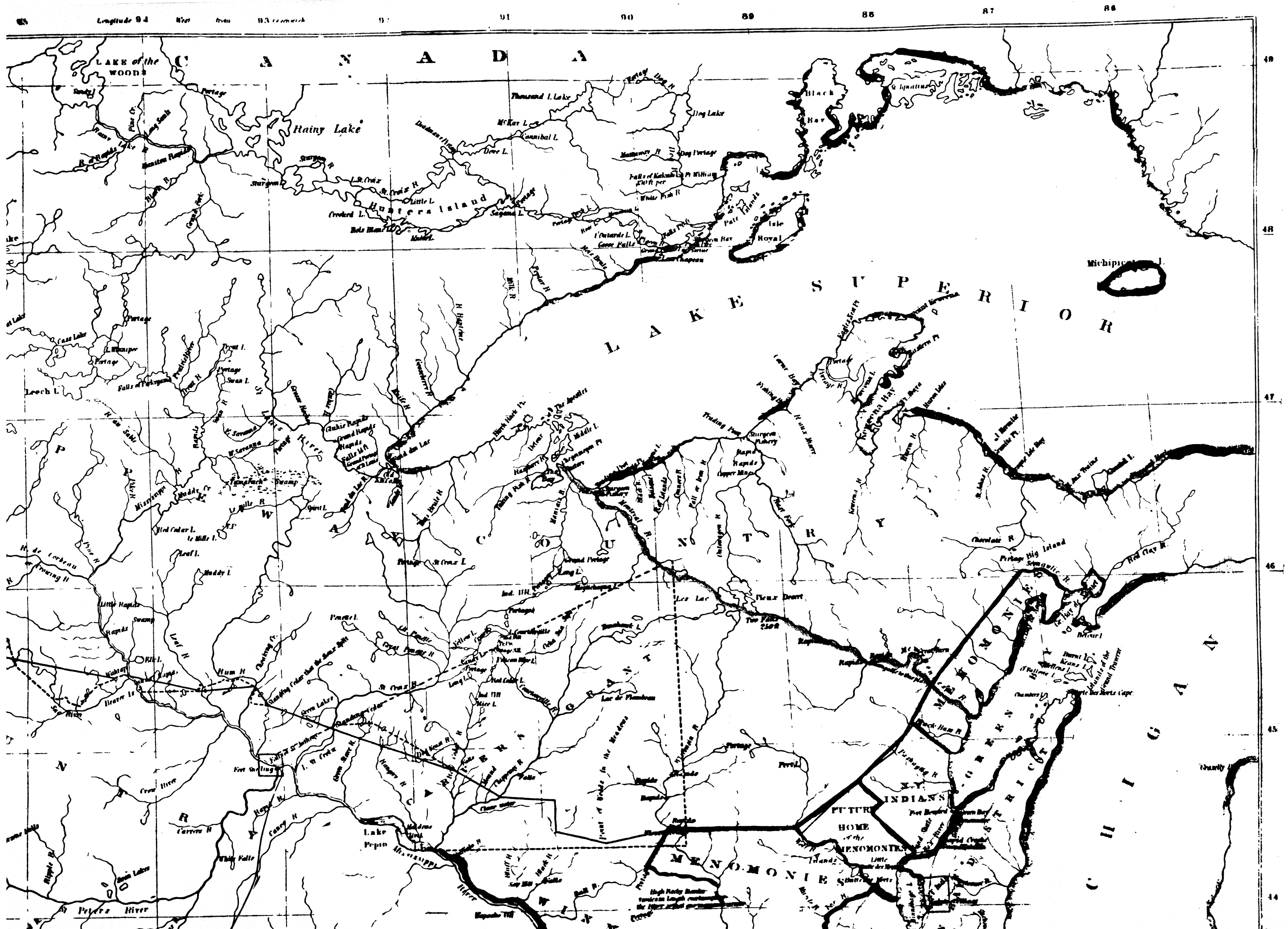














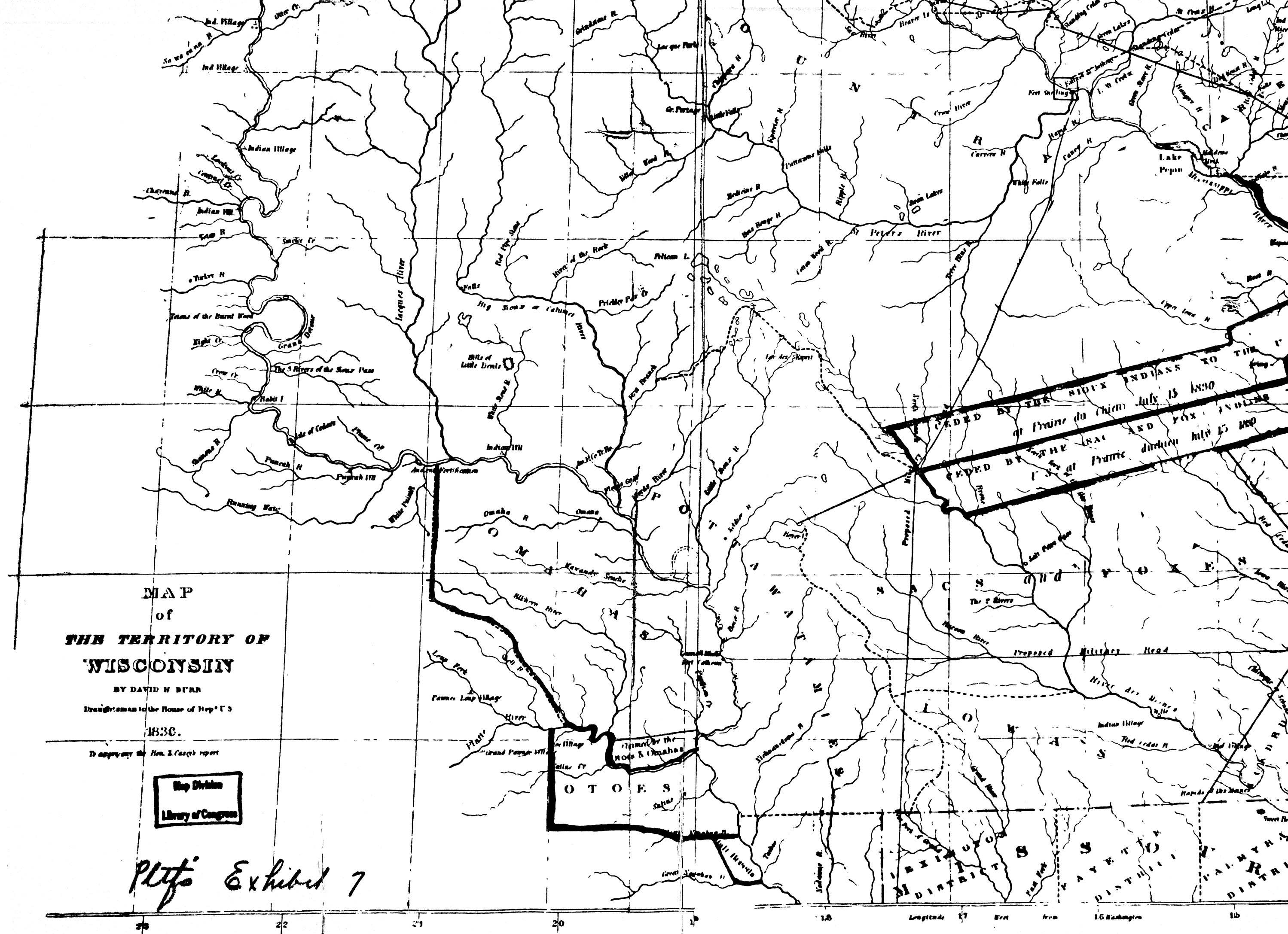
MAP  
of  
**THE TERRITORY OF  
WISCONSIN**

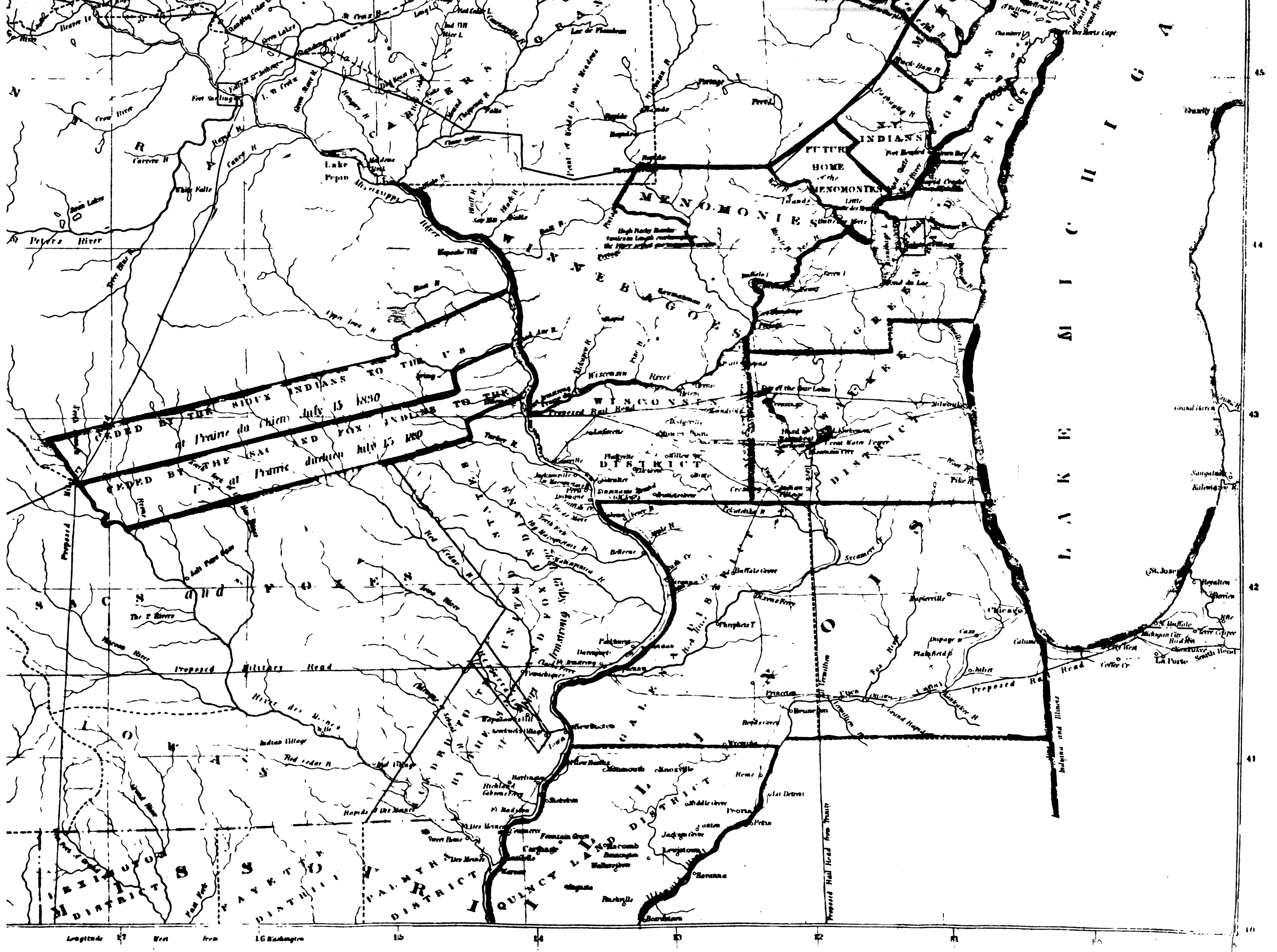
BY DAVID H. BURN  
Draughtsman to the House of Rep<sup>s</sup> U.S.  
1836.

To accompany the Hon. S. Cary's report

Map Division  
Library of Congress

*Plt. Exhibited 7*





Longitude 87 88 89 90 91 92 93 94 95 96 97 98 99 100

40 41 42 43 44 45









Plaintiff's Exhibits 40, 41, 42.

He was evidently attendant upon the Senate Committee February 19th, (see Exhibit 40) which also indicates he was speaking of Lake Vieux Desert as at the head of the Montreal.

2. The Mitchell Map (P's Ex. 1)

Report 380—24th Cong. 1st Session, dated March 2, 1836, develops the inaccuracy of this map and the danger of relying on an inaccurate map in defining state boundaries.

3. Burr's map of March 2, 1836 (P's Ex. 179)

Is a map drawn by David Burr, draughtsman of the House of Representatives. It is a copy of a map attached to Report 380 referred to in the last paragraph and is herewith reproduced. (Opposite page).

It will be noted that the map depicts rivers corresponding to the Menominee and Montreal without naming them and a group of Lakes corresponding to the Group elsewhere described as Lakes of the Desert, also without naming any of the Lakes.

Plaintiff's Exhibit 9 is another map by the same author, but evidently drawn for public use.

The geographical situation is the same, but the legend "Lac Du Vieux Desert" is printed across the group of Lakes. The language is singular, but evidently applies to the whole group.

4. Burr's map of March 11, 1836 (Plaintiff's Exhibits 6 and 7)

Are copies of a map (reproduced on opposite page) which was transmitted by the Commissioner of the General Land Office to the Committee on

Territories March 11, 1836. It bears the Legend drawn to accompany the report of the Hon. Z. Casey.

(Test. Col. Martin, page 664.)

It will be noted that a change is made, in that the Montreal is now shown as rising in a lake a considerable distance to the Northwest of the central Lake of the group which had been shown as the headwaters on the former map. On this map the Montreal and Menominee rivers are named.

Also on this map appears the legend "Les Lac Vieux Desert" the "Les" being directly under the detached lake at the head of the Montreal.

This legend is in the plural.

(Test. Fr. Gagnieur, page 86.)

Exhibit 6 is the copy of this map which was found among the old papers of Lucius Lyon.

See stipulation on Plaintiff's Exhibits, pages 35a, 36, 37, 38.

This copy bears a blue pencil line up the length of the Montreal to the Lake at its head, overland to the Lake at the head of the Menominee and down the Menominee.

Plaintiff's Exhibit 7 is a photographic copy of a copy of this map found on file in the Library of Congress and the Land line between the Lakes at the head of the Montreal and the head of the Menominee is inked in a dotted line.

Plaintiff's Exhibit 8, a map by Tanner, copyrighted August 1836, (Testimony Col. Martin R 662) duplicates the conditions shown on Exhibits 6 and 7 except that the legend reads "Lakes of the Desert" instead of "Les Lac Vieux Desert."



5. Plaintiff's Exhibit 59, a map by J. Calvin Smith of New York, Merch. Exchange, dated 1840,

Duplicates the geography shown on Exhibits 6, 7, 8, but names the detached Lake at the head of the Montreal, "Lake of the Desert" in place of the legend carried on the other exhibits.

6. Plaintiff's Exhibit 175, the Judson Map,

Is a copy of the Map No. 1, attached to Cram's 1st report being Exhibit B of the Bill of Complaint, a map published by authority of the Wisconsin Legislative Assembly in 1838. It will be noted that this map depicts a continuous water boundary—it is here produced.

#### D. Cram's Error.

##### 1. Causes.

The survey of the line described in the Michigan Enabling Act, S 177, was entrusted to a Captain of the Bureau of Topographical Engineers of the War Department, Thomas Jefferson Cram, of Racine, Wisconsin, in July 1840.

He was instructed to survey only the land line between the headwaters of the Montreal and the Menominee and the line thru Green Bay. In regard to the land line the following language was used in the letter of instructions:

"The line from the head of Montreal river to the head of the Menominee, must also, of necessity, be surveyed, as it is an undetermined line, without distinct physical characteristics. This line, it is said, must pass through Desert Lake. Recent information induces the belief that there are several lakes, between the headwaters of these two rivers, called: Lakes of the Desert. They are

so delineated and named on some maps of that locality which I have examined. The survey will, however, give correct information on this subject."

Plaintiff's Exhibit 14.

Plaintiff's Exhibit 14.

It does not appear that Cram was furnished with any of the maps used by Congress.

His report, Plaintiff's Exhibit 15, shows he did have a copy of the Judson map of 1838, Plaintiff's Exhibit 175—Exhibit B of the Bill of Complaint.

Cram ascended the Menominee, surveyed a line to the largest lake in the vicinity and was forced to leave the country by inclement weather.

He was informed by Indians that there was no lake at the head of the Montreal, but that it took its rise in a swamp, and was eight days' travel by an Indian without a pack from the Large Lake. Plaintiff's Exhibit 15.)

## 2. Results.

On his return he made a report, Plaintiff's Exhibit 15, concluding that the large lake which he called Lake Vieux Desert was the Lake designated by Congress as a point in the boundary, and that in as much as this lake was not connected with the Montreal, the line as defined was an impossible line.

He attached a copy of the Judson map to his report, pointed out its inaccuracy, and concluded that Congress had been misled by a similar map. (P. 4, Plaintiff's Exhibit 15.)

He also attached what he called a corrected map showing the Montreal rising in a swamp far to the northwest.

Following Cram's report the condition was reported to Governor Woodbridge of Michigan by Douglas Houghton, (Plaintiff's Exhibit 16) State Geologist of Michigan, and resolutions passed requesting Congress to further define the line and authorizing the Governor to appoint a Commissioner to act in conjunction with a Commissioner to be appointed by Congress.

Plaintiff's Exhibits 17, 18, 19.

Douglas Houghton was appointed for Michigan, but no one for Congress or Wisconsin.

The memorial produced a further appropriation (Plaintiff's Exhibit 21) and Cram returned to the scene in 1841 under instructions to map the entire country surrounding the proposed line, and return the map to Congress.

Cram sent Lt. Webster to continue the survey of the land line from Lake Vieux Desert westward. He met Douglas Houghton at the mouth of the Montreal and the two remained in camp several days taking astronomical observations. Cram then proceeded up the old portage trail and Houghton up the river by canoe. They met again at or near Cram's monument and there remained in camp several days taking further astronomical observations and being there joined the second day by Lt. Webster.

Houghton was engaged upon the Geological survey of Michigan. Cram returned and filed his 2nd report, (Plaintiff's Exhibit 23), with maps of the Menominee and Brule, and of the Montreal. On the latter the West Branch of the Montreal is very inaccurately portrayed as dividing into Middle River and Hemlock Creek (Plaintiff's Exhibit 112). Douglas Houghton drew a

sketch of the same (Defendant's Exhibit 103). The manuscript and sketch indicate that Houghton relied upon Captain Cram for his information.

Houghton had sketched the lower reaches of the Montreal on a previous trip 1840, (Defendant's Exhibit 102). In the previous sketch he had evidently proceeded up the Portage Trail to the second Barrier and noted a small streak crossing the Trail three times. In the new sketch he indicates what must be the west branch as dividing and crossing the Trail north of the Barrier and not crossing the Barrier.

Cram had discovered Pine Lake at the head of the East Branch and caused an offset line to be run from the main line to accurately determine the position of its center, and he set a stake at the point where the main line of survey reached the East Branch, and called it Astronomical Station No. 2, and said in his report it might be taken as the headwaters of the Montreal. (P. 3 Plaintiff's Exhibit 23.)

He commented that it was unfortunate that Lac Vieux Desert must be taken as a point in the boundary as it made a crooked line, and continued his erroneous conclusion that the line described in the Michigan Enabling Act was an impossible line. (P. 4 Plaintiff's Exhibit 23.)

Captain Cram further recommended that the Islands in the Menominee and Brule be divided all above Quinnesec Falls to go to Michigan, and all below to Wisconsin. There are no important islands above the division point. (Plaintiff's Exhibit 170.)

He also discusses the "Most usual ship channel" of Green Bay, but took no action in regard to it except to later expend money appropriated for surveying the

boundary in a survey of Door County, Wisconsin, and the islands in dispute in this case (Plaintiff's Exhibit 94). This survey included soundings of the Strawberry passage and Port des Morte passage, but not of Rock Island passage or the Western passage in Green Bay. (Plaintiff's Exhibit 97.)

Douglas Houghton reported to Gov. Woodbridge of Michigan the information he had obtained from Captain Cram, concluding the line was an impossible one. (Plaintiff's Exhibit 47.)

Several bills introduced in Congress to redefine the boundary according to the recommendations of Captain Cram failed of passage. (Plaintiff's Exhibits 27 to 33 inclusive.)

## E. Admission of Wisconsin

### 1. Enabling Act

The State of Wisconsin was admitted by Enabling Act (U. S. Stat. at Large, Vol. 9, page 7) August 6, 1846. The boundaries of the proposed state to the extent of the portion now in dispute were defined as follows:

“Beginning at the northeast corner of the State of Illinois, that is to say at a point in the center of Lake Michigan, where the line of 40 30' of north latitude crosses the same; thence running with the boundary line of the State of Michigan through Lake Michigan, Green Bay, to the mouth of the Menominee river; thence up the main channel of said river to the Brule River; thence up the last mentioned river to Lake Brule; thence along the south shore of Lake Brule in a direct line to the center of the channel between Middle and South Islands, in the Lake of the Desert; thence in a direct line to the headwaters of the Montreal

River; as marked upon the survey made by Captain Cram; thence down the main channel of the Montreal River to the middle of Lake Superior."

"To prevent all disputes in reference to the jurisdiction of the islands in said Brule and Menominee rivers, the line be so run as to include within the jurisdiction of Michigan, all the islands in the Brule and Menominee Rivers (to the extent to which said rivers are adopted as a boundary) down to and inclusive of the Quinnesec Falls of the Menominee, and from thence the line shall be so run as to include within the jurisdiction of Wisconsin all the islands in the Menominee river from the Falls aforesaid, down to the junction of said river with Green Bay;"

"That the adjustment of boundary as fixed by this Act between Wisconsin and Michigan, shall not be binding on Congress unless the same shall be ratified by the State of Michigan on or before the first day of June 1848."

No action of the State of Michigan ever ratified any adjustment of boundary, either before or after June 1, 1848, although Wisconsin had accepted admission as a State under the conditions named prior to the expiration of the date for ratification. (Plaintiff's Exhibit 37.)

## 2. Burt's Survey

William D. Burt was entrusted with the survey of the line under this act, (Plaintiff's Exhibits 35 and 36) and relocated the line from the head of the Brule to Cram's monument on the East Branch of the Montreal, in 1847.

Linear surveys then proceeded under Burt's supervision. (Defendant's Exhibit 198.)

### 3. Taxation

The first date of entry or taxation of any of the disputed area by Wisconsin was soon after her admission, but taxation and control of some description began as late as 1909, (Defendant's Exhibit 336) and Wisconsin is not today exercising jurisdiction over some of the islands in the Menominee in dispute, nor over some descriptions on the islands in Green Bay.

The district was first occupied by lumbermen and had little other development along the boundary until recent years.

The first intimation that any portion of territory granted to Michigan was being claimed by Wisconsin came when Merryman's Island originally surveyed in Michigan, was surveyed in Wisconsin on special application in 1854. The survey in Wisconsin was cancelled by order of the Commissioner of the General Land Office in 1862, and Wisconsin's efforts to tax ceased. (Defendant's Exhibit 198, sheet 28.)

This island is on the Michigan side of the main channel in the Menominee River below Quinnesec Falls.

### 4. Discovery of Error as to Montreal

The next news came from one George Cannon, who, in 1907, wrote to the Hon. Peter White of Marquette, Michigan, telling him that he considered the West branch of the Montreal the main channel and thought Cram had made an error in this regard. He suggested that it be properly determined whether the headwaters of the Montreal were in Island Lake where nature put them, or at the junction of a small creek with the East Branch where Captain Cram put them. (Plaintiff's Exhibit 61 to 67 inclusive.)

Later in 1907, Peter White was appointed by authority of the Michigan Legislature as a representative of the State, ambassador to Wisconsin, but no action resulted. (Plaintiff's Exhibit 72.)

In 1909, the Michigan Legislature instructed the Attorney General, now Judge Bird, of the Michigan Supreme Court, to investigate and bring action if he deemed it advisable.

Attorney General Bird employed one Prof. J. B. Davis, of the University of Michigan, to assist him.

Davis made some investigation which he reported to Attorney General Bird, (Defendant's Exhibit 380), but did not learn of the Cram error or the situation on the Menominee or in Green Bay. This was in the nature of a private report by an employee of the Attorney General and its introduction in evidence has been objected to. (P. 1012.)

##### 5. Michigan Constitution of 1909

The same year a new constitution was adopted by the State of Michigan, and the article on boundaries was amended to claim all rights of which any knowledge was then had, to-wit:

*"Section 1.* The State of Michigan consists of and has jurisdiction over the territory embraced within the following boundaries, to-wit:" \* \* \* thence through the middle of the main channel of the westerly branch of the Montreal river to Island Lake, the headwaters thereof, thence in a direct line to the center of the channel between Middle and South Islands in the Lake of the Desert; thence in a direct line to the southern shore of Lake Brule; thence along said southern shore and down the River Brule to the main channel of the Menominee River; thence down the center of the main channel of the same to the center of the



most usual ship channel of the Green Bay of Lake Michigan; thence through the center of the most usual ship channel of the said bay to the middle of Lake Michigan; \* \* \*"

Attorney General Bird passed out of Office in 1910, without making the report required of him by the Senate on this subject. See stipulation (R. 1012.)

Hon. Peter White died. See stipulation. P. 39.

In 1919 the Michigan Legislature provided for the appointment of a Commission to investigate the question and funds for the expense thereof. (Plaintiff's Exhibit 106.)

Hon. Sigurd Nelson of Ironwood,  
Hon. Michael H. Moriarty of Crystal Falls,  
Hon. Alvah L. Sawyer of Menominee,  
were appointed.

This commission met and organized in 1920. See stipulation.

Investigations and surveys were carried on.

The commission made a report to the 1921 Session and received a further appropriation. (Plaintiff's Exhibit 106.)

Hon. Sigurd Nelson died.

Hon. Michael H. Moriarty died.

The Secretary then reported his conclusions to the Governor and Attorney General, and this action was commenced.

Those conclusions were formed from the evidence now in the record in this case.

## II. The Montreal-Vieux Desert Sector.

### A. What is the main channel of the river Montreal?

The history of the enactment of the boundary legislation makes apparent the Congressional intent that

the boundary should pass directly up the main channel of the Montreal to the center of the Lake at its head. The boundary Commission sought to learn which branch of the Montreal was the main channel in 1836 and the line as Congress defined it.

1. Report of Michigan Engineers to Boundary Commission

The engineers employed reported in substance, (Plaintiff's Exhibit 170)

Drainage area of West Branch 96.6 sq. miles  
East Branch 112.28 sq. miles

That the above included the watershed of Spring Creek (17 square miles, Chas. Halbert, Record P. 865) which affects the flow of the east branch only for a mile or so above the confluence.

That the West Branch receives a considerably larger flow from Island Lake than the East Branch receives from Pine Lake.

That over their entire length except the last mile or so the West Branch carries the flow from a larger drainage area.

(Testimony of Rupp, Record, P. 165-7)

These figures were later substantiated by defendant's witnesses (Mr. Halbert, Record P. 865-6)

2. Volume

The report of Michigan Engineers, (Plaintiff's Exhibit 170) recites the taking of float measurements for the purpose of determining the relative discharge of the two branches, which measurements, the report says, were substantiated by the figures given in the report of the Wisconsin Railroad Commission, (Plaintiff's Exhibit 108). The engineers conclude that the

West Branch is the larger stream, 20 to 25% larger volume (Testimony T. R. Hasley, Record P. 250)

Elaborate proofs were offered by defendant as the result of stream gauging activities.

Figures are available over a few months at stations established at the confluence by defendant since the commencement of this suit.

The measurements taken by Wisconsin Railroad Commission in connection with a Federal department at Gile and Ironwood, began in 1917 and continued to date with some interruptions.

An examination of Plaintiff's Exhibits 173 will disclose that the Giles Station on the West Branch and the Ironwood Station on the East Branch, are practically a corresponding distance upstream from the confluence.

The proofs (Plaintiff's Exhibit 108) (Defendants Exhibits 343, 343a, 343b, 343c, 343d, 343e, 344 and 345) disclose for the period 1917 to 1925, the West Branch at Gile produced

a mean discharge of	67.2 cu. ft. per sec.
a peak discharge of	1480. cu. ft. per sec.
a minimum discharge of	2.4 cu. ft. per sec.

The figures available for the Station at Ironwood on the East Branch over the same period (Plaintiff's Exhibit 108) Defendant's Exhibits 342, 342a, 342b, 342c, 342d, 346 and 347) disclose

a mean discharge of	49.1 cu. ft. per sec.
a peak discharge of	910. cu. ft. per sec.
a minimum discharge of	2.3 cu. ft. per sec.

The testimony of the Michigan engineers was based upon these figures except as they may have been

slightly altered by the measurements taken after their report (the 1924-25 figures)

The stations at the confluence disclose a ratio of discharge at those stations over the entire period

West Branch 100%

East Branch 105%

(Testimony of Mr. Macy, Record P. 982) which difference Mr. Macy says might well be within the possible error in measurement.

These measurements were taken at comparatively low stages.

Mr. Macy (Record P. 983) testified that eliminating the month of July 1925, (low Stage) the ratio was

West Branch, 100%

East Branch 100.7%

That one additional week of peak discharge, such as is shown at the inception of each years data, would reverse the ratio.

It will be noted on the Hydrograph (Defendant's Exhibit 357a) the peak for the West Branch is 277, East Branch 328. Defendant's witness, Chas. Halbert, testified (Record P. 961) that the West Branch came in flood and receded quicker than the East Branch.

Plaintiff's engineers submitted a diagram of the confluence, (Plaintiff's Exhibit 171) Defendant's engineers submitted two diagrams (Defendant's Exhibit 120-120a) and a number of photos (Defendant's Exhibits 122, 122a, 123, 123a, 124 and 124a)

From these it appears the East Branch turns back from the general course of drainage and joins the West Branch against the grain of the country.

### 3. Pumpage.

It further appears from the testimony, (Record P. 978)

That an average pumpage from mines and wells is as follows:

Into West Branch	1.6 cu. ft. per sec.
Into East Branch	4.7. cu. ft. per sec.
Position and use.	

(Plaintiff's Exhibit 170) The report of Michigan Engineers discloses that the West Branch was used for log driving and would be navigable for canoes, the East Branch would not except in flood stages.

#### 4. Local Tradition.

The Indians had different names for each, the East Branch "Shin-gwa-Ko-sibi" (Record P. 451), the West Branch, "Go-ge-gasugun" and from the confluence to the lake, "Ga-wa-si-wa-no-si-bi."

The name Montreal means white water and was applied by the French at the lower reaches.

On the maps used by Congress (Exhibits 6 or 7) it is applied to a River with Branches from both directions heading in a lake.

This is very similar to the condition shown on the Farmer map of 1829 (Defendant's Exhibit 131) on which appears the legend "rapid but is ascended in canoes." This map was shown to be in the possession of Lucius Lyon, (Plaintiff's Exhibit 49).

The first application of the name Montreal to the East Branch is upon Cram's map.

After that the village of "Montreal" was organized on the West Branch (Record P. 964).

The "Montreal River Logging Company" was organized to operate on the West Branch, (Record P. 943).

The School District of Hurley named its school on the West Branch, the "Montreal" school. (Record P.

Congress defined the center of the Lake of the Desert

as a necessary point in the boundary, so that a straight line projected from that point to the nearest headwaters of the Menominee would then fix two certain and definite points. The rest of the boundary was defined by monuments placed by nature.

Congress knew the Montreal river headed in a lake; that it was one of a group of lakes described on maps in its possession as Lakes of the Desert or Les Lac Vieux Desert. The only reasonable construction of the intent of Congress—from the language used—is that either Island Lake or Pine Lake must be the lake. If the main channel of the Montreal is found to be the West Branch, then Island Lake is the lake Congress intended. If the East Branch is held to be the main channel then Pine Lake is the point intended by Congress as a definite point in the boundary. One or the other must be found—if the intention of Congress is given effect.

### III. The Menominee Brule Sector.

The Michigan grant is to the center of the Main Channel.

The Wisconsin Grant the same, except for the proviso conditional upon ratification by Michigan that the line (along the center of the main channel) be so run as to include within the jurisdiction of Michigan all islands above Quinnesec Falls and those below within Wisconsin.

No ratification occurred.

The islands are today only partially surveyed (Plaintiff's Exhibit 172), (Defendant's Exhibits 197-198) and many of those surveyed have never been taxed. No plan has been followed and the location of

the boundary is in doubt most of the way (Testimony of Chas. Hulbert (Record 845.)

A detailed statement of the situation in regard to the islands working downstream follows: Only such islands as are involved in this suit are mentioned with the exception of three which are referred to for their bearing on the matter. The islands of which neither party has taken actual possession are included as in dispute, in fact all islands on the Michigan side below Quinnesec Falls.

The report of Michigan engineers in relation to (Plaintiff's Exhibit 172) islands in the Brule is to the effect that they are all small rocky islets, of no value for agriculture or timber. That the main channel of the river Brule is in all cases well defined and should it be settled upon as the boundary, would make all questions of jurisdiction as simple as any marking of a line could, since this river flows almost its entire length through rock or rocky formations.

Island No. 1. An island in the Brule occupied by the Peninsula Power Company and forming part of their Hydro-Electric development.

The testimony of Chas. Halbert, (Record 859-860), engineer for Wisconsin Railroad Commission, is to the effect that this island is on the Michigan side of the main channel.

Except for Island No. 1, there are no islands of consequence above Quinnesec Falls of the Menominee and none which are surveyed or occupied, and down to this Point and below it to Grand Island in the Menominee, the main channel is well defined and its acceptance as a boundary would satisfy all needs. There are innumerable islands varying in size from a rock the size of a hen coop to one-half or three-fourths acres. To

place all these islands in Michigan would in most instances give plaintiff practical control of this river, since there are islands which most of the year are practically a part of Wisconsin shore, but would not in any degree compensate for the loss to Michigan of the islands her side of the main channel below Quinnebec Falls. In this respect Captain Cram's recommendation and the adjustment offered in Wisconsin's Enabling Act were unquestionably greatly in Wisconsin's favor.

Island No. 2. Grand Island, an island in the Menominee below Quinnebec Falls, a large island which conditions indicate is formed from two or three islands.

Surveyed as a part of Sec. 19, Town 38 N. Range 28 West, Michigan. Not surveyed in the original plats of Wisconsin (Sheet 22 Defendant's Exhibit 197) (Sheet 24 Defendant's Exhibit 198)

There is no evidence of survey by Wisconsin, however taxation by Wisconsin is shown on Exhibit 336.

Unoccupied and uncultivated.

The Plaintiff here consents, in the event of a decree being entered in this case, to any necessary provision to cancel the survey of this island in Michigan, and to define the boundary as the thread or center of the main channel.

Island No. 3. An island in the Menominee below Quinnebec Falls.

Position—Opposite Lot 2, Sec. 31, Twp. 37 R. 28, Michigan, on the Michigan side of the main channel.

Condition—Unoccupied and unsurveyed.

Sketched on plats of original Michigan survey.

Not sketched on plats of original Wisconsin survey.



Island No. 4. An island in the Menominee below Quinnesec Falls.

Position—Opposite Lot 3, Sec. 31, T. 37, R. 28, Mich. and Lot 2, Sec. 8, T. 36, R. 22. Wis.

Condition—Unoccupied and uncultivated.

Sketched on plats of original survey in Michigan.

Surveyed as parts of Secs. 19-36-22, and 24-36-21 in Wisconsin.

That is to say an island is so surveyed which is not in existence, unless this be the island and the survey in those sections a mistake.

Defendant's Exhibit 336 shows that these descriptions in Wisconsin have reverted to the State for taxes or are still in the Government.

Island No. 5. Chippewa-Holmes-Miscauno a large island in the Menominee below Quinnesec Falls, first named by Cram, second by loggers, third as a summer resort.

The channel between this island and the Michigan bank is broken by two small islands in the approximate position of the one shown on Cram's survey.

Position—Opposite Lot 2, Sec. 36, T. 37 N. R. 29 W. Mich.

On Michigan side of main channel.

Condition—First occupies as terminus of logging Railroad, from Michigan side the logs being carried onto the island by rail and dumped into the main channel between island and Wisconsin bank.

Now occupied by Four Seasons Club of Chicago.

Sketched on Cram's map and named Chippewa 1.

Sketched on original Michigan plats.

Surveyed on Wisconsin plats, 1858, as Lots in Secs. 23-24-26 and 27 T. 36, R. 21.

The description on the main island were entered in 1894, on the small islands have never been entered.

Taxation of large islands commenced 1895, by Wisconsin Exhibit 366, this island was first occupied in early logging days and continually since.

In the plats the width of the channel between the island and Wisconsin bank is given as 3 chains, 12 links, and of the channel between the island and the Michigan bank at its extreme width just below the island dividing this channel, as 2 chains, 25 links.

Island No. 6. An island in Menominee, below Quinnesec Falls, 1st below Miscauno.

Position—Opposite Sec. 6-36-28 Mich. on Michigan side of Main Channel.

Condition—On plat of Michigan survey as above.

Not on plat of Wisconsin survey.

Unoccupied.

Island No. 7. Waite's Island, in the Menominee, below Quinnesec Falls.

Position—Opposite Secs. 17 and 18, T. 36, R. 28 Mich.

On Mich. side of Main Channel.

See photo No. 7, Plaintiff's Exhibit 172.

Condition—Sketched in Michigan Plats.

Surveyed in Wisconsin as parts of Secs. 6 and 27, T. 35, R. 22.

Owned and occupied by W. F. Waite of Menominee, Michigan.

Defendant's Exhibit 366, indicates entries beginning 1878 and last entry 1901. Taxation beginning 1879 and final description appearing on tax roll for first time in 1906.

Island No. 8. Merryman's Island in Menominee, below Quinnesec Falls.

Position—On Michigan side of Main Channel.

Condition—Surveyed in both states, but Wisconsin survey cancelled.

Owned and occupied by White Rapids Power Company.

A comparison of the original survey plats at this point shows the Michigan survey accurate, and the Wisconsin survey greatly exaggerated, the channel between this island and the Michigan bank, including two islands in that channel in the survey which clearly never existed. (Sheet 28 of Defendant's Exhibit 198 is the Wisconsin survey), (Sheet 25 of Defendant's Exhibit 197 is the Michigan survey).

This island is now under the jurisdiction of Michigan—the Wisconsin claims having been stifled by the action of a Government Department in cancelling the survey. It is, however, within the Wisconsin conditional grant and defendant claims it in its answer.

Island No. 9. Sixty Island Group, in the Menominee, below Quinnesec Falls.

Position—Twp. 33, R. 28, Michigan.

Twp. 35 R. 21, Wisconsin.

Sketch by Michigan engineers, Plaintiff's Exhibit 172.

Condition—Unoccupied except one or two islands on Wisconsin side of Main Channel used as meadows by Indians living on Wisconsin Bank.

Not meandered in Michigan Plat.

Surveyed in Wisconsin Plat and a comparison of that plat, Sheet 29, of Defendant's Exhibit 198, with the Michigan Engineers' sketch follows:

Island 1 and 5 of sketch were formerly one and surveyed as Lot 13 on the plat.

Island 6 of sketch is Lot 10 of plat.

Islands 11 and 12 were one—Lot 7 of the plat.

Islands 7 and 10 were not surveyed.

Island 8 was Lot 9.

Islands 9 and 13 were one—Lot 8.

Island 15 was Lot 4.

Island 17 was Lot 3.

Islands 14 and 16 were not surveyed.

There has been little or no change in the position or size of this group.

The engineers report Islands 1-2-5-6-7-8-9-10-11-12-13-16 on the Michigan side of the Main channel;

1-5-6-8-9-13-11-12 were surveyed in Wisconsin, as lots; 13-10-9-8-7 of Sec. 35 and 36, T. 31, R. 21, Wisconsin.

Exhibit 366 indicates no entries or taxation of these lots.

Island No. 10.

Position—In Menominee River, below Quinnebec Falls, Opp. SW SW 14-35-29 Mich. on Michigan side of channel.

Condition—Unoccupied—uncultivated.

Shown on Michigan plats.

Survey on Wisconsin plats, Lot 4-15-34-21.

Entry made in 1884, no record until 1896.

Island No. 11.

Position—Opp. Lot 3 Sec. 3-34-29 Mich.

On Michigan side of Main Channel.

Condition—Used and conveyed as a part of farm by owners of above Michigan description. This farm is the old Kittson Trading Post, and was in existence before the surveys.

Surveyed in Wisconsin plats as Lot 5 Sec. 33-34-21 and Lot 7 Sec. 2, 33-21.

Defendant's exhibit 366 shows the first description

entered in 1885 and taxes for 1889 sold—no transfers.

The second lot does not appear on the records.

Island No. 12. Baker's Island in Menominee, below Quinnebec Falls.

Position—Opp. Lot 4 Sec. 10-34-28 Mich. on Michigan side of Main Channel.

Condition—Unoccupied shown on original plats of both states and surveyed in neither.

Defendant's exhibit 366 shows no record of this island.

Island No. 13. In Menominee, below Quinnebec Falls.

Position—Opp. Lot 4, 36-35-28 Mich. on Michigan side of Main Channel.

Condition—Unoccupied and unsurveyed—sketched on Michigan plats—not on Wisconsin plats.

Island No. 14. In Menominee, below Quinnebec Falls.

Position—Opp. Lot 2-36-35-28 Mich. on Michigan side of Main Channel.

Condition—Same as No. 13.

Island No. 15. In Menominee, below Quinnebec Falls.

Position—Opp. Lot 1, Sec. 21-34-27 Mich. on Michigan side of Main Channel.

Condition—Same as No. 13 and No. 14.

Island No. 16. Long Island in Menominee, below Quinnebec.

Position—Opp. Lot 3-12-33-28 Mich. on Michigan side of Main Channel.

Condition—Unoccupied, uncultivated.

Shown on Michigan plat.

Surveyed on Wisconsin plat.

Lot 4-30-33-23-

1-31-33-23.

Island No. 18. Twin Islands in Menominee, below Quinnebec Falls.

Position—Opp. Lot 4 12-33-28 Mich.

1 13-33-28

on Michigan side of Main Channel.

Condition—Unoccupied and uncultivated.

Sketched in Michigan plats.

Surveyed on Wisconsin plats.

Lot 5, 6 and 27, of Sec. 1-32-22

Lot 4 of Sec. 12-32-22.

Plaintiff's exhibit 172, Engineers Report, shows the channel between both Long Island and Twin Islands and the Michigan shore as very narrow—slack, and these islands practically mainland of Michigan.

Island No. 19. Boom Island, near mouth of Menominee.

Position—Opp. Lot 3, Sec. 4-31-27 Mich. on Michigan side of Main Channel.

Condition—Unoccupied and uncultivated

Sketched on original plats of both states. Surveyed on special application in 1855 through Government Land Office in Wisconsin.

Island No. 20. Railroad Island.

Position—Opp. Lot 1, Sec. 4-31-27 Mich. on Michigan side of Main Channel.

Condition—Occupied by C. & N. W. and C. M. & St. Paul Ry. Company.

Sketched on plats of both states—surveyed, in neither.

Island No. 21. Sugar Island.

Surveyed as Lot 6, Sec. 3-31-27 Mich.

Not shown on Wisconsin plats.

Occupied by Menominee River Sugar Company and Central West Coal Company.

This island is now under the Plaintiff's jurisdiction,

but is within the Wisconsin conditional grant and its claims in the answer herein.

With the exception of Grand Island and Sixty Islands Group, no mention has been made of the large number of islands on the Wisconsin side of the Main Channel of the Menominee.

#### *IV. The Green Bay Sector.*

##### *A. General Conditions*

The Boundary in the Michigan Enabling Act is the center of the most usual ship channel.

The Wisconsin grant here follows the Michigan boundary.

The Traverse from Lake Michigan to Green Bay is broken into five principal channels. The question here is as to whether Port des Morte or Rock Island passage was the most usual ship channel in 1836.

After entering the bay a southerly course permits the choice of either Strawberry passage or the passage west of Chambers Island.

The monies appropriated by Congress, (Plaintiff's Exhibit 21) as a result of the memorial from the Michigan Legislature (Plaintiff's Exhibits 18, 19 and 20) were expended under the direction of Captain Cram (Plaintiff's Exhibit 94) under instructions to map the territory surrounding the boundary line, and in connection with the Hydrographic survey of Lake Michigan in 1842. He mapped the Porte des Morte passage and Strawberry channel (Plaintiff's Exhibit 97).

In doing this he surveyed the Door County Peninsula and the Islands here in dispute in order to show both sides of the most usual ship channel. He also took soundings with the evident intent of making his work useful for purposes of navigation.

He did not, however, define any line.

In the Wisconsin Enabling Act no further definition was furnished.

Thus Cram's survey being of a part of Wisconsin mainland, all descriptions were returned to Wisconsin for taxation.

B. Porte des Morte and Strawberry or Rock Island Western passage.

No determination of this question has ever been had.

The testimony of T. R. Hasley, R. P. 118, shows the Strawberry and Porte des Morte passage to be the shorter for vessels to or from Green Bay city, variously named as Green Bay, Ft. Howard, Haverino.

The charts, (Plaintiff's Exhibits 114 and 115) and the testimony of Vol Martin, Record page 656-9, disclose that the Porte des Morte passage is the safer and wider.

These charts and sailing directions, (Plaintiff's Exhibit 119) and Pilot Books (Plaintiff's Exhibits 118 and 180) indicate both the Porte des Morte and Strawberry passages better natural channels requiring less artificial marking for purposes of navigation, and in fact fairly safe without any marking.

An appropriation for a lighthouse on "Pottowatomie" Island at the entrance to Green Bay was made June 30, 1834, (4 Statutes at Large 721)/

The first record of an established light is Pottowatomie light on Rock Island in 1837, (Plaintiff's Exhibit 109). The Reservation was made June 8, 1840 (Plaintiff's Exhibit 120). Plaintiff's Exhibit 121 is a copy of the map submitted in letter of June 9, 1840, referring to the reservation. This map is of Boyers Bluff on Washington Island and not the location of the Pottowatomie light.

Captain Betts, (Record p. 31) testified that there



was some mistake about Pottowatomie light, that it should have been on Boyers Bluff.

He also testified that a light was burning in the old lighthouse on Plum Island when he first came through the Door in 1845, and was discontinued when Pilot Island was established (1850). He knew the names of the keepers.

There seems to be no government records of this lighthouse, but it is referred to in sailing directions, (Exhibit 180), the ruins are still there (see photos Plaintiff's Exhibits 126) also testimony of Fred Richter and Captain Peterson.

The Green Bay city light was established in 1848.

The Eagle Bluff and Chambers Island lights were established in 1868.

The appropriation of 1848 for a lighthouse in Porte des Mortes passage was spent for Pilot Island, (Plaintiff's Exhibit 109).

### *C. Tradition.*

The witnesses, Mary Ann Cota, and Dave Cota, were Indians, whose father and grandfather, respectively, was an employee of John Jacob Astor; a pilot, a man "who went to show the people the way to go with their boats." They knew he took them "by Fish Creek" the Strawberry passage and through the Door, (Record P. 291), and that that was the usual course (Record P. 292). That the western channel was rough (Record P. 293). The Eastern channel was better sailing and the one the Indians had used for canoes (Record P. 294). She saw the Mackinaw boats with furs for Mackinac pass along that channel (Record P. 294) a lot of them, many times.

She is 68 and saw the first steamer when 9, it went to Green Bay via Strawberry passage, others came the

same way (Record P. 297). They traveled through the Door, the Indian for which was Kee bi skjonan. (Record P. 300.)

Dave became a sailor in the lumber trade inheriting his father's or grandfather's knowledge of Green Bay and its entrance, (Record Pps. 305-6). On all trips from the lake to southern bay ports he used the Door and Strawberry passage.

The western passage was dangerous for sail vessels because of no protection or landmarks (Record P. 308).

Just as the habit of the Indians passed to the sailors so it passed to the steamboat captains (Record P. 312).

The sailing vessels which did not use the door used the Poverty passage not the Rock Island passage (Record P. 131).

Other direct testimony was given by J. Hubert Francart, whose mother-in-law came to Green Bay in 1804, with her father, a trader, and repeated the trip from Mackinac to Green Bay spring and fall for many years. The trip was up the East shore (Record P. 774) (Strawberry passage) and through the Door.

He himself came from Chicago to Green Bay in 1856 through the Door and the Eastern passage, (Record P. 775) at that time he was told that was the only passage.

He described the Mackinaw boats as up to 10 foot beams and 35 feet in length.

Many historical articles were offered indicating travel along the east shore and through Porte des Morte. (see Appendix B.)

Without exception the early maps indicate a better knowledge of these channels, especially Plaintiff's Exhibits 6-8.

## ARGUMENTS

### Analysis of Boundary

The problem before Congress in defining this boundary was to follow lines marked by nature and to define a straight line by fixing a known point for each terminus.

Congress settled upon the main channels of the Montreal and Menominee Rivers and the center of the most usual ship channel of Green Bay as natural lines and it remained to define merely the land line from the Montreal to the Menominee.

A point of departure from the Montreal and a point of approach on the Menominee must be selected.

Congress selected the center of the lake at the head of the Montreal as the point of departure and the nearest headwaters of the Menominee as the point of approach.

The point of departure was described in the act as the center of the Lake of the Desert. Congress was referring to the Lake actually at the head of the main channel of the Montreal. It was entirely as a result of the confusion of Lakes by Captain Cram that the boundary was considered impossible and a new line granted to Wisconsin.

The boundary which Michigan seeks by this action to establish embraces only those lands which Congress intended she should have. No action by Congress since that time indicates that any portion of those lands should ever belong to Wisconsin.

The grant to Wisconsin was made by Congress as the result of a mistake which was not discovered until 1920.

This grant was at the time supposed to be substantially in accord with the intention of Congress in the Michigan grant and it was supposed that the Michigan grant was ineffectual because of an impossible line. Yet Congress made the Wisconsin grant, so far as it might be an adjustment of boundary, conditional upon ratification by Michigan. It was the clear intent of the Wisconsin act that without Michigan's assent Wisconsin could claim no land granted to Michigan.

Wisconsin apparently yielded every point where any conflict appeared until 1909.

By her constitution she accepted Michigan boundary in the Green Bay sector and the Menominee Brule Sector. In 1864 she relinquished claim to an island within her conditional grant (Merryman's Island) and over many other islands within the conditional grant she has never claimed jurisdiction until the filing of the answer in this case.

Michigan's rights in the Montreal-Vieux Desert sector were only partially disclosed in 1907 and the real error and its causes were unknown until 1920.

There are here no compacts, agreements or findings between Michigan and Wisconsin to color Wisconsin's claim to any lands within Michigan's true boundary.

## 1. HISTORICAL BACKGROUND.

### A. The Area Before Congressional Action.

Prior to the actions of Congress in dividing the northwest territory, it was a country known only to fur traders and explorers; in the region now in dispute, particularly, there were no white settlements until some years after 1836. The Menominee river and the Montreal river were then untouched by the

loggers of later years and were merely arteries of travel for the voyageur. The district lying between the headwaters of these two rivers was a rolling wooded plateau studded with innumerable lakes. In this district, according to tradition, the Sioux and Dakota had centered their home life many years before, cultivating patches of land here and there upon the lakes, and living peacefully in a country very near in accord with the Indian idea of the "Happy Hunting Grounds." The Sioux and Dakota were driven out by the Ojibway who had been driven from their eastern home by the Iroquois. During the possession by the Ojibway, this district between the headwaters of the Menominee and the Montreal, and the many other streams finding their way into Lake Superior, Lake Michigan and the Mississippi; this high plateau country, studded with lakes on which were the settlements of the Sioux and Dakota, with their farms, came to be known in Indian as "Gete Kitagaming," the Deserted Farming Country. Most of the voyageurs and courriers des bois were of French extraction and the name "Gete Kitagaming" became "Vieux Desert," a French synonym, the deserted plantation country or the old farms. On the early maps this name appears variously in reference to either one large lake or a group of lakes, the relative position of the lakes varying considerably, but always being practically centered upon the divide between Lake Superior, Lake Michigan and the Mississippi. From this, we feel it is safe to conclude that the term "Gete Kitagaming" Indian, "Vieux Desert" French, and "Lake of the Desert" American, was at that time applied to the plateau where the Sioux and Dakota had had their farms, a district lying at the headwaters of the various streams

finding their way into the two great lakes and the Mississippi river, none of which district was in any way accurately mapped.

#### Organization of Northwest Territory.

The northwest territory was organized in 1805. The State of Virginia having laid certain claims to the territory, released them upon the condition that not to exceed five states would be formed, and not to exceed two out of the area lying north of an east and west line passing through the southern extremity of Lake Michigan. These conditions were imposed by Virginia for the purpose of maintaining the balance in Congress on the slavery question and have no connection with the present boundary dispute, except indirectly.

#### Mitchell Map.

At the time of the organization of the northwest territory, Congress had before it the Mitchell map of 1805, (Plaintiff's Exhibit 1). In this map the southern extremity of Lake Michigan was given a north latitude greater than that of the international boundary in Lake Erie, in which respect the map was in error. This error brought about the Toledo war and brought home to Congress the knowledge of the inaccuracy of the Mitchell map and the danger of defining a boundary in relation to one geographic point only, which is reflected in the later actions in Congress, particularly in the defining of the boundary here in dispute. Ohio, Indiana and Illinois were formed from the northwest territory, supposedly, from that portion of it south of the east and west line passing through the southern extremity of Lake Michigan, leaving the balance of the territory to be organized into not to exceed two states.

It was later found that all three states had encroached upon this line and we will treat further with the encroachment of Ohio.

## B. Subdivision by Congress.

### 1. Territory of Michigan.

The territory of Michigan was organized in 1805, U. S. Statute at Large Vol. 2, page 309, out of that portion of the northwest territory lying north of this east and west line and east of a line drawn due north from the southern extremity of Lake Michigan. In 1818 the balance of the northwest territory was added to the territory of Michigan, being that portion which now comprises the western part of the Upper Peninsula of Michigan, the entire state of Wisconsin and a northern portion of the present state of Illinois. In 1834 all of the territory belonging to the United States west of the Mississippi river and north of the state of Missouri was added to the territory of Michigan.

### 2. Territory of Wisconsin.

The territory of Wisconsin was organized April 20, 1836. The bill providing for the organization of Wisconsin territory was introduced and passed after several bills for the admission of the State of Michigan were under consideration. The language of the act creating Wisconsin territory, in respect to the boundary in dispute, is practically identical with the language of the Michigan Enabling Act, except that it is in reverse order and the Michigan Enabling Act is a little more definite. In this connection, (see testimony of Col. Martin, page 667) the language of this bill as passed originated in an amendment March 25th, 1836, which materially changed the description of the line

now in dispute and indicated recent accurate information in regard to the geographic features along that line, and an intention to make the line accord with the boundary described in S 177—the Michigan Enabling Act, introduced in the Senate March 22nd. The amendment was on motion of Mr. Clayton—author of S 178 and Senator from Ohio who appeared frequently in records of passage of S 177.

### 3. Admission of Michigan.

#### a. Toledo War.

The admission of the state of Michigan came at the conclusion of a four year dispute with the State of Ohio, commonly known as the Toledo war. Conditions had reached such a stage that the President had sent representatives to the scene and ordered out troops to prevent disturbances and the Governors of the respective states, Michigan and Ohio, had authorized military men to use the power of either state. There were some riots, but little or no bloodshed and Ohio won the contest in the Committee of Congress.

#### b. Bill of 1834.

In 1834, a Mr. Preston, of South Carolina, at a Senate Committee meeting, suggested that Ohio be granted its claim and that in return for the loss of land to Michigan on the south, that it be given so much of the territory west of the lake as lay north and east of the Menominee and Montreal rivers. This is the first reference to the boundary which is now in dispute, and it is the line which was finally agreed upon in the Committee after Michigan had sent its delegates to Congress and finally conceded the fight to Ohio for the purpose of gaining admission.



In 1834 the bill before Congress for the admission of Michigan has no value in relation to the present dispute because in that Act the western boundary was defined the same as in the original Michigan Territorial Act, to-wit, a line drawn due north from the southern extremity of Lake Michigan.

c. Thomas Bill and Report 380.

The Thomas Bill introduced in the House March 2, 1836, by the Chairman of the House Judiciary Committee, and the subject of report by that Committee (Report 380) to which report was attached the Burr map of March 2, 1836, contains the first description of the boundary now in dispute. It was a bill to define the northern boundary of the state of Ohio, and provide for the admission of Michigan on certain conditions. In other words, it was a bill settling the Toledo war in accord with the suggestion of Mr. Preston in 1834. It appeared in the House a few days after the attendance of Mr. Schoolcraft upon a meeting of the Senate Judiciary Committee within ten days thereafter Mr. Burr, draughtsman to the House of Representatives, had changed his map of this territory evidently to accord with information which he or the Committee had received from Mr. Schoolcraft. The change made by Mr. Burr was to indicate the headwaters of the Montreal to be in a lake somewhat detached from the rest of the group and considerably to the northwest of the center of the group and to label the entire group Les Lac Vieux Desert. That this boundary was the object in Burr's mind in making this alteration (Plaintiff's Exhibit 6 and 7) appears clearly from the fact that he adds to that map the name of the Montreal and Menominee rivers which

were not on his map of March 2nd, and the legend Les Lac Vieux Desert which was not on the map of March 2nd, besides correcting the map to substantially conform with the geography as it exists. There can be no doubt but that his information for the correction of this map was furnished by Mr. Schoolcraft.

d. Michigan Enabling Act S. 177.

Following the introduction of the Thomas bill in the House, and on March 22nd, the same year, a duplicate bill, S 177, was introduced in the Senate by Mr. Benton from the Select Committee appointed to act upon the President's message. It will further be noted that Plaintiff's Exhibit 6 and 7 bear the note, "drawn to accompany the report of the Hon. Z. Casey." It elsewhere appears that the Hon. Z. Casey was a member of the Committee on Territories and used that map in connection with his report on other matters. That he was a member of the Committee which attended the joint meeting of March 21st. (R. page 677). His attendance in the House at the time of the passage of the Michigan act is shown. It further appears that the language of the Wisconsin Territorial Act was amended to conform with the language of the Michigan Enabling Act on March 25th (See R. page 668). That was three days after the Michigan Enabling Act as passed was introduced, and twenty-three days after a similar bill had been introduced in the House (See appendix c). It does not appear that any one connected with Congress at any time thought there was a continuous water boundary and the language of the Enabling Act clearly indicates that such was not the idea. It does appear that the Senators and Congressmen dealing with the subject of defining the boundary

of the State of Michigan had before them the difficulties arising from the use of the erroneous Mitchell map in 1805. Report 380 24th Cong. 1st Session. It appears that these gentlemen had before them an erroneous map, Burr's map of March 2, 1836, and that at the invitation of Hon. Silas Wright, a member of one of the Committees, Mr. Henry Schoolcraft, U. S. Indian agent for the territory of Michigan, and a man more familiar with that district than any other person available, was invited to address the Committee and impart such knowledge as he had on the geography of the country.

That on March 2nd, the Judiciary Committee of the House, made a report upon a bill introduced upon the same day by its Chairman, defining the boundary as it now exists, attaching to that report a copy of the old Burr map, but that within nine days thereafter Mr. Burr had corrected his map to accord with conditions as they exist, or nearly so, the corrected map being drawn for and furnished to a member of one of the Committees which met in the joint session February 19th. It also appears that a copy of this corrected map was furnished to the Hon. Lucius Lyon, Senator-elect from Michigan and that upon that copy somebody drew a blue pencil line indicating where the boundary was in accord with the Plaintiff's contentions in this case. That another copy of said corrected map was filed in the Library of Congress with a line indicating the boundary.

On March 22nd, the Chairman of the Judiciary Committee of the Senate, introduced in the Senate, a bill which, in relation to the boundary at least, was a duplicate of the Thomas Bill, the latter being known as S

177, and being finally passed, became the Michigan Enabling Act. On March 25th, the language of the Wisconsin Territorial Act then under consideration, was amended so as to make the boundary conform to the language of the Thomas Bill and S 177.

C. Congressional knowledge and maps of the hour.

1. Schoolcraft.

Besides the maps in use, it appears from Plaintiff's Exhibits 40, 41 and 42, that Henry Schoolcraft, at the invitation of the Hon. Silas Wright, appeared before the Judiciary Committee of the Senate "to impart information, which I was supposed to possess, on the geography and natural resources of the Lake Superior Region." That he was quite familiar with the region appears in one of his letters, published in the Niles Weekly Register, dated August 5, 1836, and that his attendance upon the Senate Committee was February 19, 1836, appears from his letter, Plaintiff's Exhibit 40, to Lucius Lyon, written the next day, in Washington. That he considered Lake Vieux Desert as a lake at the head of the Montreal River, appears from the text of that letter, in the first paragraph, where he speaks of the advisability of giving up that portion of the territory west of that lake to the mouth of the Montreal river. This he states, would embrace only the region of the Porcupine Mountains and nothing more, which would not be true if he were speaking of the same lake which was afterwards named Vieux Desert by Captain Cram.

Probably no person in the country was more familiar with the geography of this country and the Indians who lived in this district than Henry Schoolcraft. It

will be noted that the language of the Michigan Enabling Act as it exists, first appeared in the bill attached to Report 380 which appeared March 1, a few days after his attendance upon the Judiciary Committee of the Senate. That almost immediately following this date, the Burr map was corrected to accord with the more correct information which Schoolcraft undoubtedly possessed.

4. Burr's Map March 11, 1836, Exhibits 6-7.

The group of lakes is changed to show another lake a considerable distance to the northwest, which lake is there depicted as the head of the Montreal river. The Montreal river is shown as having several branches, but a principal channel in a general southerly direction heading in this lake and the legend "Les Lac Vieux Desert" is printed across the entire group of lakes including the lake at the head of the Montreal river.

*Lucius Lyon Copy.*

\* An exact copy of this Burr map of March 11th, is produced in evidence marked Plaintiff's Exhibit 6, this being a copy found among the private papers of Lucius Lyon, who was a delegate to Congress from Michigan in 1836. Upon this copy so found among the papers of Lucius Lyon a blue pencil line is drawn, evidently indicating the boundary agreed upon in committee. This line passes up the most central channel of the Montreal river to the lake at its head which is one of the group of lakes there denominated "Les Lac Vieux Desert." It then passes overland through the group of lakes to the head of the Menominee taking

its rise in another lake of said group, thence down the Menominee river.

*Copy in Library of Congress.*

Another copy of this Burr map of March 11, 1836, is offered in evidence as Plaintiff's Exhibit 7, being a photostat copy of the map on file in the Library of Congress. On this map the line indicating the boundary line agreed upon in Committee is inked in exactly as the line is blue pencilled in the Lyon map.

Considered in connection with his letters, it becomes apparent that Lucius Lyon obtained this map in connection with his services as delegate and the line was drawn to indicate the agreement which was reached in Senate Committee. Also patently the map in the Library of Congress was filed for the purpose of showing that agreement reached in Committee. It may thus be fairly said that the intention of Congress was that the boundary should pass down the most central or main channel of the Montreal river to the middle of the lake at its head which was one of the group of lakes described on the maps used by Congress, as "Les Lac Vieux Desert" or as the "Lakes of the Desert." From this point the boundary should pass overland to the nearest headwater of the Menominee river. This point is the outlet of Lake Brule. On this map there is no headwaters of the Menominee shown in the vicinity except the head of the Brule in Brule Lake, which was later determined by Captain Cram to be the head of the Menominee. The language of the act then carries the boundary down the Menominee river and then through the middle of the most usual ship channel of Green Bay to the middle of Lake Michigan. It

is noticeable that upon this map the group of islands at the entrance to Green Bay are inaccurate except in reference to the Strawberry Passage and the Port des Morte cape and passage, which indicates the more complete knowledge of this district.

The language of Congress, in the act, is evidently made in reference to the fact that there was at the time a certain channel which was being *used* by ships, which channel could be readily determined by any person upon the ground. It thus appears to us that unquestionably the intention of Congress was that the boundary should be drawn as contended for by Michigan in the bill of complaint in this cause, as more specifically shown in Plaintiff's Exhibit 174, here reproduced.

D. *Cram's error, its causes and effects.*

1. Causes.

Following the passage of S 177 and the acceptance by Michigan of the conditions therein prescribed, provision was made for survey of the boundary line now in dispute and after considerable delay one Captain Cram was entrusted with the mission. Cram's appointment came in July 1840, and he immediately set about gathering his party for his first trip which commenced at the mouth of the Menominee river, the river being ascended by canoe, without any accurate survey being made, to the head of the Brule in Brule Lake. Cram reports that he was considerably hindered by Indians who resented his encroachment upon the property which they still had title to. Owing to the late start he got no further than the head of the Menominee, his

survey party running a line from there to a large lake which he named "Lake Vieux Desert", when snow-storms and bitter weather forced him to hasten from the country.

#### Instructions.

Cram had received instructions from the Surveyor General to survey that portion of the boundary which lay between the headwaters of the Montreal and Menominee rivers, his instructions being to the effect that it would not be necessary to survey the rivers themselves. He was told that the line must pass through old desert lake and that certain maps designated several lakes as Lakes of the Desert, but that the survey would furnish definite information.

#### Erroneous Indian Information.

He was not furnished with the map used by Congress at the time of defining the line, Plaintiff's Exhibit 6. On his arrival at the head of the Menominee river, the outlet of Brule Lake into Brule river, he was told by Indians that the Montreal river did not rise in a lake, but rose in a swamp far to the northwest as indicated by his map, (Exhibit C attached to the Bill of Complaint) attached to his first report and that it was eight days' travel by an Indian without a pack from Lake Vieux Desert to the Montreal.

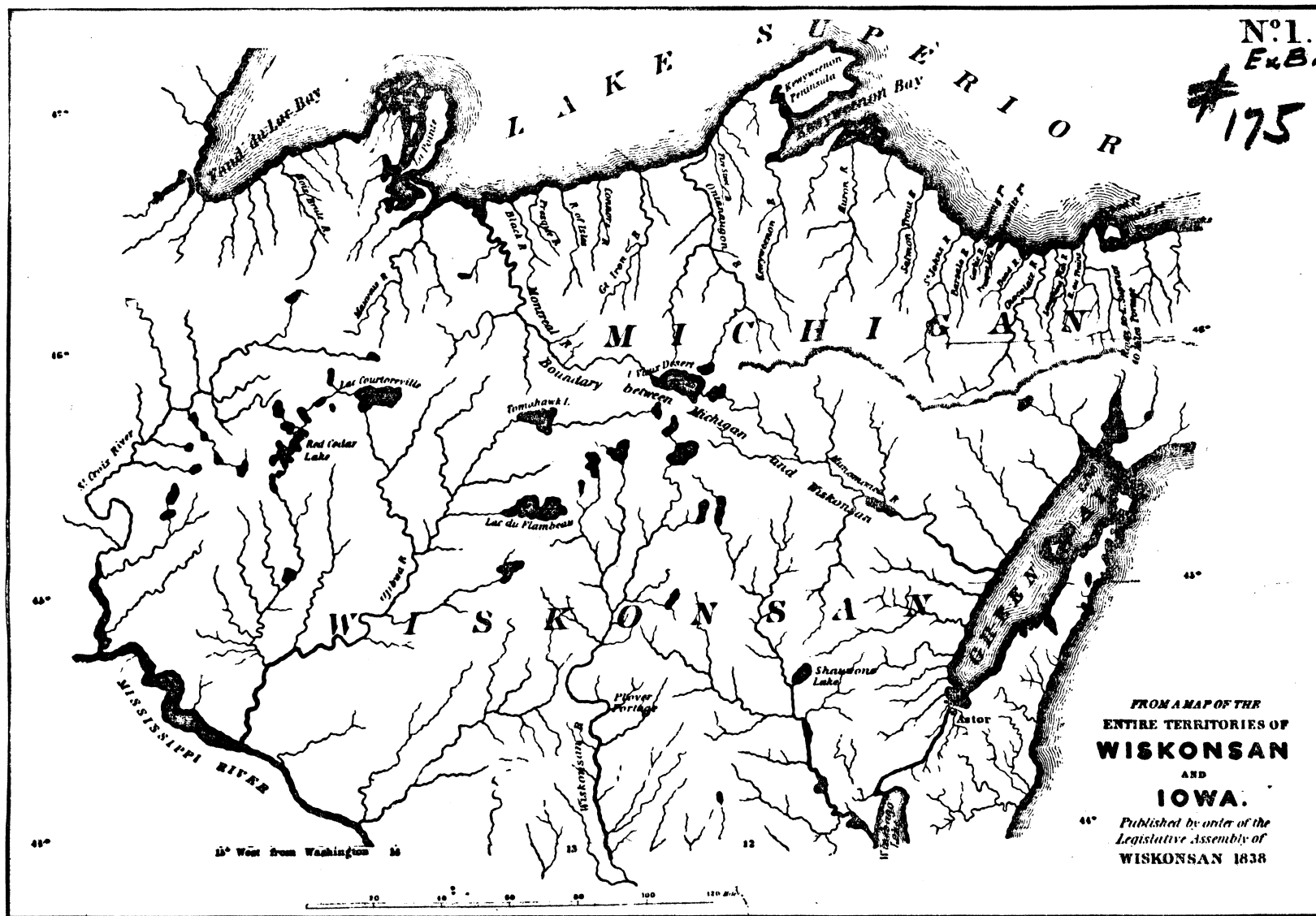
#### Erroneous Map.

Cram also had in his possession a map, (Exhibit B of the Bill of Complaint), commonly known as the Judson map, being the map of the entire territories of Wisconsin and Iowa, published by order of the Legislative Assembly of Wisconsin, in 1838. On this map



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#175





both the Montreal and Menominee rivers are shown as rising in a large lake labeled L. Vieux Desert, the line of the rivers and lake being marked boundary between Michigan and Wisconsin, and showing a continuous water boundary, which it would be apparent to any engineer could not be in existence.

Captain Cram realized that the survey entrusted to him was intended to be the survey of a straight line between a point on the Montreal river and a point on the Menominee river and that Congress had, in designating the center of the Lake of the Desert, as a point in the boundary, intended to fix it as the point of departure from the Montreal River system.

Being informed erroneously by Indians that there was no lake at the head of the Montreal River but that it took its rise in a swamp and having in his possession a map which he knew to be erroneous but which indicated that the Montreal River took its rise in the large lake which he found near the headwaters of the Menominee, it appeared to him that Congress must have been misled by a similar map and defined a boundary which would be impossible to lay out.

It was not alone the erroneous information which Cram received which caused his error. It was the further indication that Congress which had, in fact, acted upon accurate information, had been misled by an erroneous map. Cram was not only misled himself as to the true conditions but he was misled as to the knowledge of Congress in defining the boundary and convinced that the boundary was impossible because of the erroneous information furnished on the Judson map.

## 2. Results

Cram being unable to continue his trip to the westward because of weather conditions, made a report drawing conclusions upon the information which he had obtained from the Indians, the Judson map and his own survey (the latter consisting merely of running a line from the outlet of Brule Lake to Lake Vieux Desert). He concluded that since there was no lake at the head of the Montreal river, the large lake which he called Lake Vieux Desert, must be the Lake referred to by Congress in the definition of the boundary, and that since it was not at the head of the Montreal it would be impossible to lay down a line as defined in the Michigan Act. His principal error lay in the fact that he became convinced that Lake Vieux Desert was the lake referred to by Congress as Lake of the Desert. This conclusion he arrived at from the Indian information that there was no lake at the head of the Montreal and from the Judson map which showed the large lake "L. Vieux Desert", in substantially the position in which he found it, as the head of the Montreal river. Cram in his report says that he is satisfied Congress acted on erroneous information to the effect that this lake was at the head of the Montreal river, whereas as a matter of fact Congress had the true conditions before it at the time it acted and unquestionably referred to that one of the lakes known as Lakes of the Desert which actually was at the head of the main channel of the Montreal river. As the result of Cram's first report, however, it was recorded that the line defined was an impossible line and that Lake Vieux Desert was the lake referred to by Congress. This error of Captain Cram was never discovered until the organi-

zation of the Michigan-Wisconsin Boundary Commission, in 1920, and in all other transactions in relation to this boundary the conclusions of Captain Cram were taken as true.

#### Second trip.

#### Subsequent actions.

In 1841, Capt. Cram returned to the district for the purpose, as he was instructed, of mapping the country between the headwaters of the Montreal and the Menominee in such manner as to enable Congress to further define the line. Under the direction of a Lt. Webster a line was projected from Lake Vieux Desert striking the east branch of the Montreal river, some distance above Pine Lake at its head, and at the junction of said river with a small creek known as Lehman's Creek. Capt. Cram himself ascended the Montreal river by way of the Portage Trail. He was accompanied at the start and again at the destination of this trip by Douglas Houghton, State Geologist of the State of Michigan. Douglas Houghton, according to his journal, travelled by canoe up the Montreal river which was then at flood stage. On arriving at the confluence he took the easterly branch for reasons which he does not mention. All three parties arrived at the spot later designated by Cram, Astronomical Station No. 2, now Cram Monument, at practically the same time. It is apparent, and the testimony of the engineers in that connection shows, that this could not have occurred except by pre-arrangement for a meeting at a point to be determined by latitude and longitude. The meeting at this point later designated by Cram as the headwaters proper of the Montreal river, was ar-

ranged by these parties before going into the woods, and does not reflect the discovery of conditions described in the boundary act, but merely was a point fixed by latitude and longitude to be used in further description of the line by Congress. On this trip Capt. Cram discovered that the head of the east branch of the Montreal was in a small lake known as Pine Lake. He caused an offset line to be run from the main line of survey to the center of this lake in order that its position might be accurately determined, and that its center might be used as a point in the boundary to be further defined. *It very evidently never occurred to Capt. Cram that this Pine Lake might be the lake referred to as Lake of the Desert in the definition by Congress*, because in his report he speaks of the advisability of disregarding Lake Vieux Desert and of laying out a further boundary and of laying the line directly over the land from the headwaters of the Montreal to the headwaters of the Brule. He left it open to Congress to determine whether the line should run from the Cram monument or from Pine Lake, and whether or not it should be run through Lake Vieux Desert, which he said was unfortunate because it made a crooked land boundary. Had Capt. Cram at any time had before him a map used by Congress in defining the boundary, unquestionably this dispute would never have arisen and the line would have been properly surveyed as Michigan now claims it should have been. Not having this information, Cram's second report continued and reiterated the erroneous conclusion that it was impossible to survey the line as defined by Congress.

As a result of the meeting of Capt. Cram and Doug-

las Houghton, the latter reported to the Governor of Michigan that the boundary was an impossible line. From the Houghton journal it appears that Houghton did not see any portion of the line except along the Montreal river itself from the mouth to the Cram Monument, and that he must have taken the information for his report from the report of Captain Cram just as he took the information for his sketch in his journal, which will be referred to later under the discussion of the Montreal river Sector.

The Michigan Legislature, as a result of a special message from its Governor, requested Congress to further define the line and further sums were appropriated which were spent by Capt. Cram in the survey of the eastern shore of Green Bay. Several bills were introduced in Congress re-defining the line, but failed of passage, and in this condition the state of Wisconsin was admitted with the northeast boundary based upon the erroneous information and conclusions of Captain Cram.

#### E. *Admission of Wisconsin* and subsequent developments.

##### 1. Enabling Act.

It is perfectly apparent from the language of the Wisconsin Enabling Act, that an effort was being made to define a new line as the boundary and that the definition was being made to accord as near as possible with the original act according to the erroneous information given in Cram's reports. Congress was evidently impressed with Cram's report to the effect that Lac Vieux Desert was a necessary point in the boundary as

having been named in the original act, and also very apparently fully believed his report that the line as defined in the Michigan act was an impossible line.

Congress further recognized the fact that having made a grant to Michigan it had no power to make a subsequent grant of any of the same territory to Wisconsin, hence the provision in regard to ratification by Michigan.

The attitude of Michigan in refusing to ratify is that Michigan desired that territory which had been granted to her and none other, and it is our contention that the grant to Michigan still stands and that the grant to Wisconsin is in effect a grant up to the Michigan line. So far as the line from the center of Lake Michigan to Green Bay, and through Green Bay to the mouth of the Menominee is concerned, the language of the Wisconsin grant follows the grant to Michigan. This is also substantially true along the Menominee and Brule rivers, except for the attempted settlement in regard to the islands, which was not ratified or carried out, in fact. As to the Lake Vieux Desert and Montreal River sector, Cram's error is responsible for the definition of the boundary given in the Wisconsin Act and for any delay on the part of Michigan in asserting its claims to the line now demanded in this bill.

Just as the State of Michigan, through its desire to become a state, conceded to the State of Ohio a portion of its territory, just so the state of Wisconsin in its anxiety to become a state, accepted a northern boundary conditional upon the line to which Michigan was entitled.



## 2. Burt's Survey.

Following the admission of the state of Wisconsin, William D. Burt, was appointed to survey the line as described in the Wisconsin Enabling Act, which he did, inventing the Solar compass as an aid to the work because of the difficulties found with the magnetic compass on account of the ore deposits in the districts.

The survey of towns and ranges then followed, first in Wisconsin and then in Michigan, and later the subdivision into sections and quarter sections. In all these later surveys the Burt line was used for want of a better one, it being the only line marked out upon the ground, the surveys being made under said Burt.

## 3. Taxation.

After the surveys had been completed, from time to time, title to the land passed out of the government into private hands and taxation thereof was commenced by the State in which it had been surveyed and the descriptions being returned by the land office to respective states. This was a gradual process, commencing, in some instances, soon after the admission of Wisconsin, and in others, as late as 1909.

Except in relation to the Burt survey it was accidental in its character, particularly in relation to the islands in the Menominee river where no plan was followed. In some instances Wisconsin laid claim to and taxed islands clearly on the Michigan side of the main channel, and not within the conditional grant of its Enabling Act, and Michigan adopted the general policy of assessing such islands as were brought to its attention within its grant. In one instance both states assessed

an island. This was the instance of a large island known as Merryman Island, containing over three hundred acres of land. It is on the Michigan side of the main channel and within the Michigan grant. It is also an island in the Menominee, below Quinnesec Falls, and thus within the Wisconsin conditional grant. Wisconsin, however, yielded its claim to this island and the survey of the island in Wisconsin was cancelled. A great many islands have never been surveyed and have never been taxed or occupied. More details of this condition will be given later.

Immediately following the admission of Wisconsin, the territory in question came into the hands of lumbermen and was rapidly logged off. Notoriously the lumbermen were indifferent as to the title to the lands they logged off, and it may be well supposed that they were indifferent as to whether they stole timber from their own or from their sister state, the actual location of the boundary was unimportant to them and no reason existed for anybody to investigate its condition or exact location for many years.

#### 4. Discovery of Error as to Montreal.

The first intimation that any error had occurred, came as the result of investigation by one George Cannon, in 1907 and 1908, who being in the region of the Montreal river on exploratory work, and evidently being familiar with the language of the Michigan Enabling Act, discovered that the boundary ran along the east branch of the Montreal, whereas it appeared to him that it should run along the west branch as the west branch appeared to him to be the main channel of the stream. This discovery he conveyed to the Hon.

Peter White of Marquette, and with his help, brought it to the attention of the Michigan Legislature in 1907. Peter White was appointed as representative to the state of Wisconsin to negotiate with that state on the subject, and being received indifferently, an act was passed by the Legislature authorizing the Attorney General of Michigan to investigate the matter and bring such suit as he deemed advisable. At the same time a newly adopted constitution of Michigan claimed the West Branch as a boundary. The Attorney General employed one Prof. Davis of the University of Michigan, to make a private investigation. He learned but little of the true conditions. The then existing Attorney General, passed out of office, failing to make a report requested of him by the Senate, and the matter continued over from session to session, until, in 1919, an act was passed creating the Michigan-Wisconsin Boundary Commission, for the purpose of developing the full situation and in a later session of 1921, a further act was passed giving the Attorney General authority to bring this action. The Michigan-Wisconsin Boundary Commission was composed of men reputed for their knowledge of history and the local conditions of the territory. After nearly two years of insistent searching, they gathered the information which is here presented to this court, and came to the conclusion that Capt. Cram had made a serious error; that the line defined in the Michigan Enabling Act was a possible line and that the State of Michigan was entitled to demand the territory kept from them by reason of this error.

The Commission had learned that the west branch of the Montreal is, over its entire length, a larger

stream than the east branch. That it flows more nearly in the center of the drainage area and more nearly corresponds to the river shown on the map, Plaintiff's Exhibit 6 and 7. That it has at its head a large lake, Island Lake, and that by local tradition it is as well entitled to the name Montreal as the east branch, if not better.

That independent of whether or not the east branch or the west branch should be found to be the main channel of the Montreal river, there exists at the head of either branch a lake and that one of said lakes should be taken as the lake designated by Congress "Lake of the Desert" it being shown upon the map, Exhibit 6 and 7, as being at the head of the main channel of the Montreal river. With this situation it requires merely to determine which channel is the main channel of the Montreal river, to satisfy the first two directions as to laying down the boundary. From that point it requires merely the survey of a line to the nearest headwater of the Menominee river since Lac Vieux Desert is merely an interloper injected by Capt. Cram because of erroneous information and is not and never should have been in any way connected with the boundary between these two states.

Under the directions of the Commission a recognition of the Brule and Menominee river was made to determine which islands would fall within the State of Michigan under the Michigan grant and great confusion was discovered. The location of the boundary in Green Bay, according to both acts depends upon the location of the most usual ship channel in 1838, and from investigation it appeared that Michigan is en-

titled to the islands north and west of the Strawberry channel and Port de Morte passage.

## **II. The Montreal-Vieux Desert Sector.**

### **A. What is main channel of River Montreal.**

Captain Cram placed his monument at the intersection of his surveyed line with the East Branch of the Montreal and surveyed that branch to its junction with the West Branch and the main stream from the confluence to Lake Superior.

He did not survey or even explore the West Branch.

In justice to Cram, let it here be said, he was not instructed that the boundary was to follow the middle of the *main channel* of the Montreal, but merely that it should follow the channel of that river.

Thus no determination of this question has ever been had. Cram's survey was generally accepted and the existence of the question was unknown until in 1907, Geo. Cannon, disclosed it in a letter to (Plaintiff's Exhibit 67, 69, 70) to Hon. Peter White, wherein, among other things, he suggested that it be properly determined "whether the headwaters of the Montreal were in Island Lake where nature put them, or at the confluence of a small creek with the East Branch where Capt. Cram put them."

### **1. Report of Michigan Engineers.**

The essential facts were reported by Engineers Rupp and Burrige (Plaintiff's Exhibit 170.)

West Branch 96.6 sq. miles.

East Branch 112.28 sq. miles.

The report further states that the above areas in the case of the East branch includes the watershed of Spring Creek, which affects the flow of the East Branch only a short distance above the confluence, and that the flow out of Island Lake at the head of the west branch is considerably greater than the flow from Pine Lake at the head of the east branch.

The drainage area of Spring Creek was determined to be 17 sq. miles (Chas. Halbert, page 865.)

This condition is aggravated by other smaller streams on the East Branch whereas the West Branch has no tributaries except small runs.

Thus the picture reported by Rupp and Burridge is that the West Branch carries a larger flow out of Island Lake than the East Branch receives from Pine Lake, and that it carries a larger flow over its length from source to confluence because a great proportion of the area drained by the East Branch only affects the lower mile or so.

The attempt by Wisconsin witnesses to discredit this testimony and its complete failure is here worthy of relation.

The Michigan Engineers procured the compiling of a map, Plaintiff's Exhibit 173, and from it by means of a planimeter computed the drainage areas as given. They had surveyed or reconnoitered the entire district and the map was compiled from their information and plats in the office of the Oliver Mining Company and represented an honest effort to get at the real facts of the matter.

The Wisconsin Engineers took the map, Plaintiff's Exhibit 173, and *corrected* (?) it. Defendant's Exhibit 350.

The method was to have an engineer, Mr. Steinmetz,

in the office of the Wisconsin Railroad Commission, check the map with original government survey plats and squeeze the respective drainage areas out of shape by reason of small streams, etc., not shown on the Michigan Engineers' Map, which he claimed to find on the original plats. The result was so laboriously arrived at as to be difficult to dispute and showed a total watershed for the west branch of 87 sq. miles, and east branch of 114 sq. miles.

Unfortunately for this young man's efforts, at about the same time Stephen B. Soule, Chief of the U. S. Geological Survey for this district, had made a practical check on the drainage areas. His conclusions were far at variance with Mr. Steinmetz, and his correction of the figures in the report of the Wisconsin Railroad Commission with which both Mr. Steinmetz and Mr. Halbert, were associated, forced the admission by Mr. Halbert, pages 865 and 866, that the Michigan Engineers were substantially correct.

We will later show how another attempt by these same Wisconsin witnesses to discredit the work of Rupp and Burridge fell like a house of cards.

This conclusion of the Michigan engineers now remains unchallenged.

So far as watershed is concerned in relation to the confluence the East Branch is somewhat larger, but over their entire length except the last mile, the West Branch carries the discharge, from a considerably larger drainage area.

The West Branch is a river of considerable size from Island Lake to the confluence.

The East Branch is a much smaller river from Pine Lake for the greater part of the distance to the confluence.

## 2. Volume.

A tremendous volume of proofs upon this subject makes subdivision imperative.

Float Measurements.

Stream Gauging.

Upstream West Branch at Gile.

East Branch at Ironwood.

Confluence.

In Exhibit 170 the Michigan Engineers report the taking of float measurements for a comparative test of the two branches, which they say were substantially supported by the report of the Wisconsin Railroad Commission, on measurements at Gile and Ironwood respectively, from which they conclude that the flow in the West Branch is the greater. This at points some distance above the confluence and on the East Branch above the mouth of Spring Creek.

Stream Gauge Measurements.

Upstream West Branch at Gile.

Stream gauge measurements over a period from 1917 to 1925 are in evidence.

They show a mean

1917-18-19.....	76.8
20.....	82.7
21.....	68.8
22.....	69.6
23.....	59.2
24 Ex. 344.....	67.6
25 Ex. 345.....	46.3

or a mean over the period.....67.2

and over the period 1917-23 a

maximum discharge .....1480

a minimum discharge ..... 2.4



The East Branch at Ironwood	
figures available show a mean	
1917-18-19.....	58.7
20.....	71.1
21.....	54.9
no mean 22.....	
no figures 23.....	
24.....	31.1
25.....	29.3
<hr/>	
or a mean over the period.....	49.1
over the period 1917-22	
a maximum.....	910 cu. ft.
minimum.....	2.3 cu. ft.

This station on the West Branch and the gauging station at Ironwood on the East Branch are practically corresponding distances upstream from the confluence and in the case of the East Branch above the mouth of Spring Creek. These measurements fairly reflect the relative size of the two streams except that the ratio increases nearer the headwaters in favor of the West Branch and from the junction of Spring Creek with the East Branch, they are approximately equal, the West Branch still attaining higher peaks.

#### At the confluence.

In 1924 and 1925 gauging stations were established by Wisconsin engineers for the purpose of obtaining evidence to be used in this suit.

Michigan engineers were not invited to co-operate or inspect this work. The results have been tabulated and hydrographed in various forms which at a glance indicate an overwhelming proportion of the waters of the Montreal produced by the East Branch.

The testimony of Mr. Macy, an expert employed by Michigan counsel to assist in fathoming the intricacies of these proofs, discloses, and this is not disputed:—

The figures given in defendant's proofs in relation to discharge at the confluence over the entire period show a relation of

West Branch . . . . .100%

East Branch . . . . .105%

which difference Mr. Macy says, page 982, is within the possible error in measurement.

Eliminating the month of July, low stage, the relation is

West Branch . . . . .100 %

East Branch . . . . .100.7%

and the figures for one additional week of peak discharge such as are disclosed would reverse the ration (page 983).

The Hydrograph, Defendant's Exhibit 352a, indicates the East Branch in April 1925, reaching a flood stage in excess of the West Branch.

It is difficult to reconcile this with the records at Gile and Ironwood over a long period which show a peak ratio of 1480 to 910 unless we apply the testimony of Chas. Halbert, defendant's witness, on the character of the streams (page 961), that the West Branch comes in flood and recedes quicker than the East and conclude the Graph is showing merely the tail water of the April flood which may well be since the greatest discharge shown is at the inception of the graph West Branch 277 cu. ft. East Branch 328 cu. ft.

#### Diagrams at Confluence.

In connection with the efforts of Wisconsin Engineers two diagrams and various photos

Diagrams 120-120a

Photos 122-122a

123-123a

124-124a

were made and introduced and there is considerable testimony in relation thereto.

It would seem the primary purpose of this offer was again to discredit the witnesses Rupp and Burridge by attacking their sketch of the confluence (Plaintiff's Exhibit 171) attached to their report on the Montreal, (Plaintiff's Exhibit 170).

The sketch of the Michigan Engineers, according to their testimony, was a careful sketch made by pacing and hand compass and fairly reflects the situation as they found it in 1920. The lines indicate defined banks which they say were at the time confining the water.

The diagrams, Defendant's Exhibit 120-120a, were made by a corps of engineers by the pacing compass traverse method, in 1924, and the lines indicate two different stages of waters edge and do not indicate well defined banks as in the case of Exhibit 171.

The photos are taken from points and in directions shown on the Diagram, Exhibit 120a.

A careful comparison of the two diagrams indicates two essential differences.

A difference in the outline of the Islands in the enlargement of the river below the confluence which is easily reconciled by the fact that Plaintiff's Exhibit 171 shows the defined banks in 1920 and Defendant's Exhibit 120 shows the water's edge in 1924-1925.

The most essential difference is the point of land on the right bank of the East Branch at the confluence which is shown on Plaintiff's Exhibit 171 and is not on Defendant's Exhibits 120-120a.

These defendant's exhibits were offered at the hearing in Madison in the Spring of 1925, and Plaintiff's counsel having seen the confluence in 1919 readily

recognized from defendant's diagram and photos that there had been a wash in this location and that the log jam in the mouth of the East Branch had forced the water to cut across this point into the confluence, and the large stump upright in the photo 122 in the mouth of the East Branch and immediately behind the gentleman wearing a cap was all that was left of the point of land shown on Plaintiff's Exhibit 171. The wash had also possibly made some change in the outline of the islands.

With this evident fact in mind cross examination of defendant's witnesses who compiled the exhibits was had for the purpose of disclosing the situation and reconciling the two diagrams.

This cross examination was met with the scoffing positive assertion that such a wash could not have occurred. Mr. Hotchkiss going so far as to assert that instead of the channel on the photo indicating a wash, it was rather a built up bank and the record was in such shape as to indicate that the Michigan engineers had made a glaring error or an intentional fabrication.

The point in issue is of little materiality except as it affects the credibility of Messrs. Rupp and Burridge.

To a man the Wisconsin witnesses insisted that no wash could have occurred, until Arne Johnson, their gauge reader at the confluence stations, was produced to authenticate the readings.

Here was a man who lived beside the confluence—who had seen it as the Michigan engineers saw and sketched it.

It immediately developed that he had stood on the bank and watched the river make the new channel around the log jam and that a neighbor was with him, Hjalmer Kalominin, testimony page 921.

Thus fell another house of cards.

### 3. Mine Pumpage.

A great deal of evidence has been given on the subject of mine pumpage, its source and volume.

It becomes apparent that the total pumpage into the East Branch is greater than that into the West Branch by 3 or 4 cu. ft. per sec. difference.

Defendant insists that this pumpage is all water which if not pumped would be hydrostatic pressure or by some other means find its way back into the streams.

We do not understand just why, if this is true, practical miners do not take advantage of the principle which controls the phenomena instead of spending large sums to pump the water to the surface.

Neither can we reconcile it with the well known fact that many of the mine workings are directly under lakes which are not thereby drained.

However, the real importance of the mine pumpage is in relation to the low stage data on stream flow.

When an exceedingly dry season occurs, run off practically ceases in this rocky country, but pumpage never falls below a certain minimum and at this stage a large percentage of the flow in both branches is from pumpage.

Deducting the pumpage from the flow in each branch as shown on the graphs would make an entirely different picture.

Mr. Macy shows the per cent of difference in flow as 5% or less, and taking an average discharge of 50 cu. ft. the difference of 3 or 4 cu. ft. in pumpage would be 6 or 8%.

To close the subject of volume let us say that at the confluence the discharge is so nearly equal as to be

a negative factor in determining which is the main channel of this river system.

From the confluence to the source, except for the first mile or so, the volume of the West Branch at any given point exceeds the volume of the East Branch at a corresponding point upstream from the confluence the ratio by which the volume in the West Branch exceeds that of the East increasing as we approach the lakes at the head of either branch.

The ratio at Gile and Ironwood, as shown by T. R. Hasley, gives the West Branch from 20 to 40% greater volume.

#### Position and Use.

The East Branch flows in a Northwesterly course from Pine Lake and after being augmented by several creeks—Lehmans, Rock and Spring, turns back upon its course to join the West Branch at a right angle in breaking through the natural barrier the second barrier from the Lake described by Houghton and Cram.

It thus appears that in the formation of these watersheds the flow from the West Branch area first broke through the barrier to discharge into the lowering waters of the Lake Superior district, and the flow from the East Branch area found it easier to back away from the barrier to join the discharge from the West Branch area.

We thus have the West Branch flowing directly down the center of the drainage area.

The testimony shows the West Branch with the remnants of improvements for log driving. That the East Branch could be traveled by canoe only in flood stages while the West Branch was navigable for canoes at all times, though very rapid.

This is particularly interesting in connection with the early maps showing the Montreal as navigable for canoes.

The West Branch follows the course of the river shown on the map used by Congress and was the most important from the then important standpoint, its use as a means of transportation.

#### 4. Tradition.

Elaborate proofs offered by defendant to show that the East Branch was always the "Montreal" and the West Branch was the "Gogogashgun" disclose instead that the Indians had their own names for both branches and for the Main Stream and never knew any part of the system by the name Montreal until the advent of the French, who gave the name to the lower river because of the falls at its mouth.

The definition Montreal as applied to the East Branch on maps is undoubtedly the result of Captain Cram's accepting it as the Montreal.

It is remarkable that even after Cram's work the village of Montreal was organized on the West Branch, a mine discovered on the West Branch was called the "Montreal." The "Montreal River Logging Company" was organized to operate on the West Branch and the school district of Hurley named its school on the West Branch as the Montreal school.

B. What Lake is "Lake of the Desert."

#### Determining Factor.

The Enabling Act reads,

"Thence through the middle of the main channel of said River Montreal, to the middle of the Lake of the Desert."

The pertinent inquiry under this heading is to what lake did Congress refer in the enabling act when it designated as a necessary point in the boundary the center of the Lake of the Desert. A scrutiny of the act reveals that the purpose of Congress in designating this point was to fix a point of departure from the Montreal River system and that unless such was the case, the description of the boundary would necessarily be defective in that no connection is made between the Montreal River system and any lake not connected with that river.

It is a well established principle in the construction of grants that such construction will be made as to make the grant a possible one and it must necessarily follow that Congress in making the center of the Lake of the Desert a necessary point in the boundary was designating a point on the Montreal River system from which a straight line could be run to another point on the Menominee River system.

It further appears (Exhibits 6 and 7) that Congress was informed (Exhibits 6, 7 and 8) by maps in its possession that there was a lake at the head of the main channel of the Montreal River which was one of a group of lakes described upon said maps as "Les Lac Vieux Desert" or "Lakes of the Desert."

Further a study of the derivation of the name "Kati'kit'egon" in Indian, Vieux Desert in French, and the American translation, "Lake of the Desert" shows that the name relates to the fact that the Soo and Dakota had farms in that region and it will thus appear that any lake on the plateau or divide of the Mississippi, Lake Superior, and Lake Michigan region, is as well entitled to the name as any other lake in that region and that the name was applied indiscriminately



to these lakes fully appears in the exhibits as outlined in appendix A of this brief.

It further appears that the Congressional action followed information given by Mr. Henry Schoolcraft and from Schoolcraft's letter (Plaintiff's Exhibit 40) it appears that Schoolcraft considered the Lake of the Desert as at the head of the Montreal River and not the lake which was at the head of the Wisconsin. Since Schoolcraft speaks of the territory west of that lake as comprising merely the region of the Porcupine Mountains while Schoolcraft well knew from his travels that the lake at the head of the Wisconsin was directly south of Keweenaw Bay and that the country west of it would include the entire Keweenaw peninsula.

There is a lake at the head of each of the principal branches of this river system.

Whichever is the Main Channel there is a lake at its head, and the boundary should pass up the middle of that channel to the middle of that lake.

Cram's Monument does not satisfy any position in the definition of the boundary and Cram did not expect it to do so.

Captain Cram definitely fixed a point by latitude and longitude which could be used in further defining a line which he supposed was necessary because he could not survey the line as then defined.

Captain Cram was a resident of Wisconsin Territory, perhaps imbued with the idea that his territory was being robbed of the Upper Peninsula, but we believe his error was bona fide, and occasioned by the misinformation mentioned.

He was convinced that Lake Vieux Desert was the "Lake of the Desert." He never knew that the lake

at the head of the Montreal was in a group of that name.

To his mind, after leaving Brule Lake, the boundary must run to the center of Lake Vieux Desert, a point never intended by Congress, and from there somehow connect with the Montreal River. He established his monument merely as a point where this connection could be made in future Legislation, and at the same time he established a point in the center of Pine Lake for the same purpose.

Cram did not see his error because he never saw the map used by Congress. He did not survey and map the West Branch and Island Lake, probably because he did not have time and provisions, (he was four months doing what he did) or because he was not instructed to determine the "*Main* channel of said river Montreal."

*Public Views of Congressional Intent Before Cram's Error.*

In the letter of Lucius Lyon and others, it is apparent that the Montreal river and Menominee river were considered as the determining factors in the boundary, with the lake of the Desert important only as being the terminus of the line along the Montreal River.

This public interpretation clearly appears in Plaintiff's Exhibit 59, a map entitled "Guide through Ohio, Michigan, Indiana, Illinois, Missouri, Wisconsin and Iowa," by J. Calvin Smith, published by J. H. Colton, Merch. Exch. New York, in 1840.

On this map conditions in this region are so similar to those shown upon Exhibits 6 and 7, as to induce the belief that at least that portion is a copy of those exhibits, the only change being that the legend "Les Lac Vieux Desert" on Exhibits 6 and 7 is omitted and

GUIDE

THROUGH

OHIO, MICHIGAN, INDIANA, ILLINOIS,  
MISSOURI, WISCONSIN & IOWA.

United States Surveys,

Locations of Cities, Towns, Villages, Forts, Harbors, Canals, National Sanctuaries,

BY J. CALVIN SMITH.

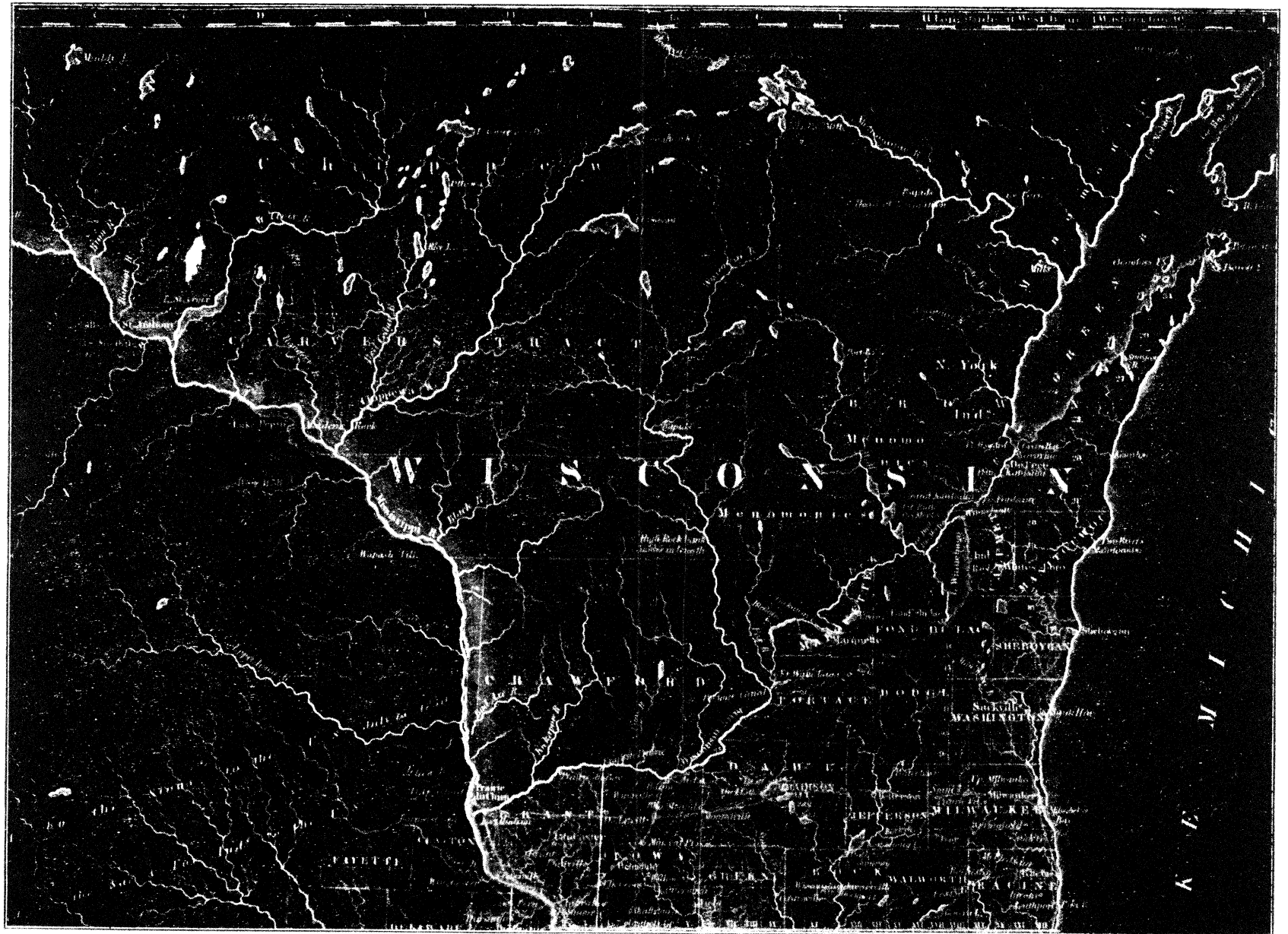
NEW YORK.

Published by J. H. Colton, Merch Exchange

1040.

Copyright, 1858.







instead the small lake at the head of the Montreal is labeled "Lake of the Desert."

How unfortunate that Captain Cram did not have this map in his hands during his survey instead of the erroneous map published by authority of the Wisconsin Legislative Assembly.

*Public Views After Cram's Error*

The nearly correct delineation found in Plaintiff's Exhibit 59 was entirely destroyed by Cram's report and many maps of subsequent date are more erroneous than the much earlier ones.

Defendant's Exhibit 166, by Disturnall in 1865, to accompany his book, "The Great Lakes," shows a string of lakes from the Montreal to the Menominee as a boundary with L. Vieux Desert to the North of the line.

Defendant's Exhibit 170, Part 2

Compiled at the request of the Senate in 1839, by Bureau of Topographical Engineers, is a duplicate of Exhibit 6 and 7 in relation to this district, except that the legend "Les Lac Vieux Desert" is changed to "Lakes of the Desert" and applied only to the group and not to the somewhat detached lake at the head of the Montreal.

This is evidently the map referred to in the instructions to Captain Cram.

Defendant's Exhibit 193

A sketch of the Public Surveys in Wisconsin, made after the survey of Door County in 1842, shows the Montreal without any lakes at its head in two principal branches—the boundary passing between them to the confluences.

## Defendant's Exhibit 194

A sketch of Public Surveys in Wisconsin and Minnesota, October 1851, shows the Montreal with two branches and no lakes and the boundary reaching the easterly branch near the confluence.

## Defendant's Exhibit 195

A sketch of Public Surveys in Wisconsin, 1866, still shows no lakes at the head of Montreal and only one principal stream.

## Defendant's Exhibit 196.

By Department of Interior, General Land Office, 1878, for the first time shows true conditions.

During the period from 1840 to 1878, the actual conditions were not made known to the public or the officials of the State of Michigan, and during that time the parties originally interested and knowing the conditions at the time of admission passed out of office and to a great extent out of existence.

The error and the fact that Congress had acted on correct information and had defined a possible line never became apparent to anyone until the research work of the Michigan Commission made it apparent.

The Michigan Commission learned that Congress had acted upon Exhibits 6 and 7, and intended the lake at the head of the Montreal by the language "Lake of the Desert;" that Cram had acted on Indian information, that there was no lake at the head of the Montreal and upon the Judson Map, which he found to be erroneous and supposed had misled Congress.

No one person ever knew both of these facts until 1921.

In the light of present knowledge, it is apparent



what Congress intended as the determining features of the boundary.

From evidence in this case they may be applied:

Up to the Middle of the Main Channel of the Montreal—we claim the West Branch, but

To the Middle of the Lake of the Desert—either Island Lake or Pine Lake, depending on the proceeding determination

Thence to the nearest headwater of the Menominee (the outlet of Lake Brule).

Lake Vieux Desert is an Interloper and should not be a point in the boundary.

The determining of the main channel of the Montreal and defining of a line from the center of the lake at the head of that channel to Lac Brule, gives a boundary in accord with the act.

It can be done from the evidence in this case without any survey since the territory is now accurately mapped and the exact location of all necessary points accurately determined.

### III. MENOMINEE—BRULE SECTOR

There is little room for argument in regard to this sector. The conditions are undisputed and a determination of the line essential since none exists the greater part of the way.

The choice would appear to be between the line of the Michigan Grant “the middle of the main channel” or the line of the “Wisconsin Grant” since no line has been established by survey or possession.

The line of the Wisconsin Grant is an impossible line unless the existence of natural facts is totally ignored.

Under the language of the Wisconsin Enabling Act how is the line along the center of the main channel to be projected into the channel between the island and the Michigan shore?

To run a line along the center of the main channel so that it does not follow the center of the main channel would be the requirement.

However, it is perfectly clear that the main channel is the only feasible line. It was the line granted to Michigan. The grant to Wisconsin was conditional and never ratified. Neither grant has been actually exercised.

The existing confusion can readily be terminated by a decree fixing the center of the main channel as the boundary and cancelling the Wisconsin surveys of the islands on the Michigan side, or arranging their transfer to plaintiff's jurisdiction.

The location of the main channel in relation to these islands is nowhere in dispute.

#### IV. The Green Bay Sector

"Thence down the center of the main channel of the same (Menominee River), to the center of the most usual ship channel of Green Bay of Lake Michigan; thence through the center of the most usual ship channel of Green Bay to the center of Lake Michigan."

There is a ship channel to the west of Chambers Island and the Strawberry Group, and through Rock Island Passage to the north of Washington, Rock, Detroit and Plum Islands. Were this the most usual in 1836 the islands mentioned would belong to Wisconsin.

The Strawberry passage to the east of Chambers Island and the Strawberries, and the Port des Morte passage to the south of Washington, Rock, Detroit, and

Plum Islands, if held to be the most usual would place all of these islands in Michigan.

These are not continuous passages and should be considered separately, i. e.

1. Rock Island or Port des Morte,
2. Strawberry Passage or West of Chambers.

It appears the channel between the Strawberries and Chambers Island was never used.

No determination has ever been made of this portion of the boundary.

Captain Cram discusses the question in his reports and recommends a further definition.

Later the same Captain Cram expended sums appropriated for the purpose of surveying the boundary in a survey of Door County, Wisconsin, including the Islands now in dispute. He did not, however, attempt to locate the boundary.

These islands having been surveyed in connection with Wisconsin mainland came to be treated as part of Wisconsin in the natural course of proceedings, and were never called to the attention of Michigan officials until the appointment of the Boundary Commissioner.

Having been surveyed in connection with Wisconsin, when entered the descriptions were returned to Wisconsin for taxation a process becoming complete about 1910, except for government reservations and some descriptions on Detroit and Plum Islands.

Cram's survey being as it was an expenditure of sums appropriated for the purpose of surveying the boundary, and in line with his instructions in 1841 to map the surrounding country, is a clear indication of where the most usual ship channel was.

In this connection it is also important to note that

his survey included soundings and such other marine data as would aid navigation of this channel.

This alone should be sufficient to determine the question since Cram's survey mapped merely the Porte des Morte and Strawberry Passage, and was an aid to navigation through those channels only.

But that such was the most usual channel also appears by much other evidence.

It may be classified as follows:

The choice being that of a sailor, his attitude should be considered and hence the importance of

A. Physical advantages

Since the expenditure of public money usually follows the greatest public need, we consider the

B. Public Improvements,

And since eye witnesses of the traffic at the time in question are not available we look to

C. Tradition,

1. The Rock Island Passage vs. The Porte des Morte Passage.

A. Physical Advantages

1. Distance

A brief perusal of the charts will indicate that for traffic into Green Bay to all points south of its entrance from any point south of the Fox Islands, the Porte des Morte passage would be the shorter.

It is in this connection that it becomes important to learn that the principal traffic into Green Bay at the period was to the settlement at the south end of the Bay, variously referred to as Fort Howard, Depere, Navarino, Green Bay.

The exports—furs, lead, ore and forest products.

The types of boats—Mackinaw boats, schooners, and an occasional steamer.

The steamers ran regularly from Buffalo to Mackinaw and Milwaukee and Chicago, and other southern Lake Michigan ports, occasionally entering Green Bay on the trip up from Chicago to Milwaukee.

The goods were reshipped from Chicago, Milwaukee or Mackinaw to Green Bay in schooners, except for small individual shipments in Mackinaw boats.

The Mackinaw boats were a survival of the fur trade, from 30 to 60 ft. long, usually rowed, and could be pulled out on the beach with tackle in case of storm, an enlarged canoe and scarcely a ship.

The lead ore came down Fox River in barges and left Green Bay in schooners.

The steamers were far from the coal fields and used wood for fuel.

For all this traffic the Porte des Mort's passage presented a course as short and for the majority of it, much shorter than the Rock Island passage.

### Difficulties of Navigation

With present aids to navigation all five passages from Lake Michigan into Green Bay, through the islands of the Grand Traverse, are simple and used according to convenience.

It might however be argued that the hazards of the period would result in the choice of a longer passage did it not fully appear that the shorter passage was also the least hazardous.

The sailor is at home upon deep wide waters and it is the proximity of terra firma—beneath or ahead which presents his hazard.

A passage between bold headlands with deep water close to land is relatively safe.

Outlying shoals invisible in thick weather or darkness, present a hazard not to be attempted except by the local pilot.

The minimum width of the Porte des Morts passage between the Porte des Morts Bluff and Plum Island is given, Col. Martin's testimony, page 658,  $1\frac{1}{2}$  miles, this is in a depth exceeding 12 ft. and for a distance of less than a mile, while passing Plum Island only.

The mariner is guided through this channel by this headland on the south and Plum Island on the north. On the Lake Michigan side Pilot Island is a natural guide to the entrance from which even on the darkest night a course could be set through the passage.

This island could be approached close enough to become visible on any but the darkest night without danger. (Capt. Clow's wreck, History of Door County.)

There were no outlying reefs except the Eaverly Shoal, which was not a menace except to ships of 12 ft. draught or over, and this shoal was readily avoided by holding up within three miles of Pilot Island, (well named).

Rock Island passage has a minimum width—Testimony of Col. Martin,  $2\frac{3}{8}$  miles. This, however, is not the effective width since the passage is made at an angle so that upon the course given through this passage a vessel is menaced at one point by an unmarked shoal within one-fourth mile to the south.

Nor is there any natural pilot such as Pilot Island to furnish a bearing from which to set a course through this passage, but rather a set of dangerous reefs to receive the approaching vessel.

Fisherman's Shoal and Fish Island Shoal submerged

three miles off shore are both a menace to any craft approaching Rock Island from Lake Michigan. They were practically unknown until 1863 and were unmarked until 1878. They surely would have been known had there been any considerable traffic by this route.

To the north of Rock Island, and squarely in the opening between Rock and St. Martin's was the nine foot shoal unknown until 1863, and unmarked until 1878.

The hazards of the Rock Island passage continue for a distance of  $10\frac{1}{2}$  miles as against the 1 mile through the Door.

Upon the mere question of hazards a careful mariner approaching Rock Island before the days of modern lights and buoys, would bear off to Pilot and take the Door passage or up through the St. Martin's passage, depending on his destination, but this will come later.

### Improvements

While the present aids to navigation are too recent to have any bearing on which channel was most used in 1838, they have a bearing upon the subject above since they indicate the necessities of the situation.

### The Door

A light is maintained on Pilot Island to guide to this passage. It has a fog signal with a range of 40 miles.

Range lights—two lights in line, on Plum Island make the passage easy.

A Coast Guard Station is maintained on Plum Island indicating the vicinity of considerable vessel travel.

### Rock Island Passage

Pottowatomie light marks the northerly headland of Rock Island.

St. Martin's light guides through the St. Martin's passage and marks a bearing point with Poverty Island light and Pottowatomie for finding the:

Channel Buoy which marks the entrance to this passage, must be found and an exact course sailed to make the passage in safety.

A flashing can buoy on the outer edge of Fisherman's Shoal warns of that menace in the channel.

A Buoy on St. Martin's or 9 foot shoal warns of the menace in the channel. A proper use of all these aids to navigation is necessary and until their establishment the passage was hazardous.

### Old Lights

In 1836 there were no lights or aids to navigation at this point unless the old Plum Island Light was in operation at that time.

There had been an appropriation for a light on Pottowatomie Island at the entrance to Green Bay.

There is no record of the building by the Government of any light in this region before Pottowatomie Light on Rock Island in 1837.

There is, however, no record at all of the old light on Plum Island.

That such a light was in operation about that time cannot be doubted, Exhibit 126, pictures the ruins—birch trees fifty years old within them.

Captain Peterson saw the ruin in 1870. (R. pages 2-7.)

Fred Richter had seen the ruins, and knew it for a



lighthouse; he had lived on the island 62 years and it was not lighted in his lifetime. (R. page 18.)

Captain Betts knew the names of the keepers and their vicissitudes, and that it was a guide through the Door and discontinued when Pilot Island light was established in 1850. It was burning when he sailed through the Door in 1845 enroute to Chicago to Peshigo by schooner. (R. pages 27-8.)

He also indicated there was some mistake about Pottowatomie Light—should have been on Boyer Bluff or some other place.

We find in 1836 no lights unless old Plum Island Light.

In 1837 Pottowatomie was built.

A brief study of the charts and the facts above, indicate that even were there no light in the Door, the establishment of Pottowatomie Light did not change the situation, since it alone was totally insufficient to make the navigation of Rock Island passage even practical.

### Tradition

Striking directly at the issue "Most usual ship channel" there are in evidence innumerable historical articles as well as the testimony of many witnesses upon the subject.

The most direct is that of the Cota's, daughter and grandson respectively, of a pilot engaged on the passage from Green Bay—the settlement to Lake Michigan in 1836. The mother had known of the route from her father's telling and the grandson had been shown the route by his grandfather as a part of his education as a sailor.

The Door and Strawberry Passage was the only course extensively used.

These witnesses are Indians who spent their entire life in the vicinity and now live in Door County, Wisconsin.

The same reasons which attracted the heavy lumber shipping of the seventies and eighties to the Door instead of Rock Island, would apply to the shipping of the earlier days and a comparison of that shipping from the testimony of the many witnesses on the subject is about fifty to one in favor of the Door.

What these witnesses had heard of travel in those days "it was all through the door."

The door was the shortest route, the least hazardous, the most easily made perfect and was in fact the one most used in 1836, just as it was later.

The information and directions given in the mariners handbooks is of some value. They are very similar and a synopsis of the most complete is here given.

Plaintiff's Exhibit 180, Extracts from "Barnet's Coast Pilot," as published for the years 1867, 1871, 1872, and 1874, corresponding pages of each issue being included to indicate the increasing knowledge of the situation. This exhibit is offered to explain and amplify the defendant's exhibit, from the same book. Particular attention is called to the facts shown by the exhibit, that in the issue of 1867, while directions are given through the Rock Island, passage, only on a route from Cat's Head Point to Escanaba, sailing directions are given for three routes through the Door, extending from the north to the south in the lake, and that Louse or Rock Island is said to be north side of the channel of the entrance to Green Bay.

That Pottowatomie Light, on Rock Island, is on the north side of the entrance to Green Bay, is clearly stating the Door as the entrance.

In speaking of the Door, it says Pilot Light is given as a guide to the south entrance of Green Bay, further stating that *the old lighthouse stands on Plum Island*. Accurate sailing directions are given for the Door passage and in the instructions for the passage through Rock Island, no sailing directions are given (p. 14) but pp. 20 and 21, warnings are given of the shoals in the entrance and sailing directions are given for the St. Martin's passage and for the Strawberry passage, within the Bay.

On page 23, sailing directions from Pottowatomie Light to Bay de Noque, laid out as given, will be found to pass through the St. Martin's passage and on that page the directions for the trip from Chicago to Green Bay by the Door, refer to the information given on the prior page for the Strawberry passage, and warns of Whaleback shoal on the western passage in the Bay.

On page 24, variation at the Door is given and the anchorage in Strawberry passage, the distance is also given from the Door to various points within the Bay.

In the issue of 1871, the following changes are noted: On page 1, there are no routes given through Rock Island passage. Page 14 corresponds to page 16 and is unchanged. 20 and 21 correspond to page 22, which now for the first time gives sailing directions for the Rock Island passage, which on study will be found to be impossible to follow, except in daylight. It also gives sailing directions for the passage west of Chambers Island, but from a brief examination of the chart it will be found that following the sailing directions given for that passage, would almost necessarily result

in disaster upon the shoal north of Chambers Island, which is not mentioned in the sailing directions, the course being laid over to the shoal. Pages 24 and 25 corresponding to the old page 23, shows a mark upon Whaleback shoal of the second class iron can Buoy, (no light or fog signal).

In the issue of 1872, appears the first mention of lights on page 8, Pilot Island, a guide for the Door passage, is shown to have a fog whistle and attention is called to the old light on Plum Island as well as the anchorage, sailing directions for the passage are given and there are no warnings of shoals on this course.

Pottowatomie Light is again mentioned as being on the north side of the entrance to Green Bay, no fog signal is mentioned. It is given as the guide through the passage of Rock Island and St. Martin's Island, and warning is given of the shoal in the entrance, and the shoals in the channel.

This issue also describes Chamber Island light, and for the first time gives information of reef running west from the north end of Chambers Island, warning of Whaleback shoal and Point Rochereau. There is comment that strangers should not attempt a passage east of Chambers or between it and the Strawberry, which undoubtedly was meant as a warning against attempting a channel between the Chambers Island and the strawberry only, as elsewhere in the publication is a complete description of the Strawberry passage with its many harbors and complete sailing directions. The information on this subject, page 24, being considerably increased from former issues and more favorable.

In the issue of 1872, on page 28, further favorable information is given on the Door passage, and also

description of Poverty Island passage, with sailing directions.

In the issue of 1874, Green Island light is added to the list of lights with the statement that the best channel down to the bay is to the eastward of same.

There is a further statement in this issue that Washington Harbor, on the north end of Chambers Island, is headquarters for the fishermen.

The directions for sailing the Strawberry passage are unchanged, except for further information in regard to harbors, and for the first time appear in the book, directions for sailing north of the Beaver Island group.

The original sailing directions on the Rock Island passage are unchanged, and would still be impossible, except in daylight, and in this issue for the first time appear directions for entering the harbor at Fox River, Green Bay.

#### Strawberry Passage or Western Channel

The passages present a choice to vessels passing up or down Green Bay between the entrance and Southern Bay ports.

#### Physical Advantages: Distance

The element of distance again enters and to any vessel bound or leaving a port south of Menominee the Strawberry passage is the shorter. Testimony of T. R. Hasely.

#### Hazards of Navigation

The Strawberry Channel proper is the short passage between the large Strawberry Island and Eagle Bluff on the Door County mainland—for a distance of less

than a mile the navigable channel narrows to  $1\frac{1}{8}$  miles. There are no shoals in the channel and the headland is a perfect landmark. The entire Door County Peninsula consists in fact of a high bluff with prominent headlands every few miles so distinctive in character as to form a perfect guide for the mariner even on a dark night (Testimony of E. V. McComb, A. E. Henes, James Alger, Capt. Clow)

It was this fact added to the saving in distance which made this the most used passage.

After entering the Bay, sea room is an unknown thing and a vessel may not drive ahead on dead reckoning except by bearings on either shore.

Except in darkness or the thickest weather, both sides of the bay are visible to any vessel on it.

The East shore a continuous row of distant headlands with deep water.

The West shore a low lying beach without distinctive marks and with shoal water many miles from the beach, in the case of Peshtigo Shoal, 6 miles or nearly one-half of the width of the Bay.

After entering the Bay the Strawberry passage could be negotiated by coasting the East shore. What shoals and reefs existed were avoided by their relation to the islands, i. e., directly north and south of the Strawberry and not in the course.

A perfect harbor with good wood supplies every few miles and deep water close to the headlands made the passage easy.

The Western Passage presented other questions.

From Chambers Island to the Michigan shore is a distance of six miles, but from the low lying Michigan shore for over a mile the water is too shoal for any vessels.

In thick weather a vessel would ground before the shoreline would be visible and hence this shore must be avoided.

To enter this western channel from the entrance to the Bay, Whaleback Shoal, a submerged unmarked reef near the middle of the Bay and Northwest of Chambers Island, must be avoided on the right, while on the left, the unmarked shoals to the north of the Strawberries and the Frying Pan Shoal almost directly on the course must be left to port.

In the passage a reef making out one-half mile from the most western promontory of the Island menaced on the port while the shoals on the Michigan side menaced on the right.

On passing Chambers Island, the Peshtigo Shoal blocked all passage on the Western side of Green Island except a very devious route.

Green Island thrust out three rocky reefs and the course must angle back to the East shore north of this island.

The water between Chambers and Green Island is the most unprotected and is a middle ground for all currents in the Bay. The most dangerous spot in the district because of the currents, the choppy or broken seas, and the lack of any near protection in case of trouble. It was the scene of the Hackley disaster (History of Door County) and to be avoided. (Testimony of McComb, Henes, Alger and Clow.)

A brief study of the chart will indicate that the western passage was a detour—longer—between unmarked shoals and with no advantage over the Strawberry passage except for a vessel bound to Menominee. Menominee was not in the picture in 1836, or to any extent until 1864.

## Public Improvements

The Eagle Bluff Light and a channel buoy directly in the center of the Strawberry channel, now make this passage easy. Chambers Island and Green Island lights being unnecessary but adding an extra landfall for the passage.

The entrance to the Western passage is now guarded by buoys on the Whaleback and Frying Pan shoals, the latter unlighted.

The passage itself is between the Chambers Island and Menominee Lights, the latter being range lights, and thence back to the East to avoid Green Island, lighted, and Peshtigo Reef, marked by a lightship six miles from land, and the course being further determined by a bearing on Sherwood Point Light at the entrance to Sturgeon Bay, opposite Peshtigo Reef.

The opening of the Sturgeon Bay Canal has of course upset many of the courses prevailing in 1836, but the Strawberry passage still is the most usual passage for vessels bound from southern Bay ports out through the islands.

## The First Improvements

were the Eagle Bluff and Chambers Island Lights, 1868.

The first was all that was necessary for the Strawberry passage, the channel buoy being a very recent and scarcely necessary aid.

The Chambers Island light was a start in the right direction, but the Western passage was not sufficiently lighted until the establishment of Whaleback—menominee—Green Island, and Peshtigo Reef Lights.



Remembering that travel largely was from Green Bay to the Lake, it becomes quickly apparent that the East shore was coasted by the Mackinaw boats which found almost continuous protection up thru the Strawberry passage.

In fact no mention of the western passage is found in any of the historical articles until the Journal of Douglas Houghton, reports an exploring trip to the mouth of the Menominee, and even he returned by way of the Strawberry passage and the Door, Little Detroit.

The steamer met by the Houghton party was in the Strawberry passage, and the schooners followed the Mackinaw boats when traffic became heavier, all used it. (Testimony of the Coats, James Lyon, James Alger. R. pages 96-279-301.)

In fact until the settlement in Menominee brought sufficient traffic to call for a light on Chambers Island—the Strawberry Passage was practically the only one used and it continued to be the most usual and still is, being used today by the Goodrich steamers, and the coalboats between Green Bay and the East, as well as all pleasure craft.

The settlement of the East shore harbors before Menominee is a further indication of where the travel was.

Without exception the historical articles bearing on the subject describe the passage along the East shore (see description of the egg battle at what is now Egg Harbor) and the only present use for the Western passage is by freighters from Menominee bound thru the Door or from Escanaba thru the Sturgeon Bay canal.

In support of Plaintiff's claims that the Door and Strawberry passage were the most usual ship channel in 1836, it appears that they are now and always were so because they constitute the shorter-safer route for the greatest amount of traffic and further that this route was naturally followed because it was known and used by Indians who passed on their knowledge of it.

If these channels be the most usual in 1836, then the boundary should be along the center of them (described by T. R. Hasley) and the Government description on Rock, Washington, Detroit, Plum, Chambers, and the Strawberry Islands were wrongfully returned to Wisconsin for taxation and should be surrendered to Plaintiff.

#### APPENDIX "A"

List of Exhibits showing "Lake of the Desert."

Plaintiff's Exhibit 1:

Mitchell map of 1755.

Legend "River and Lake of the Desert" in Mississippi drainage.

Plaintiff's Exhibit 5:

Farmer's Map of 1830,

Legend "Lac Vieux Desert," drainage to Southwest.

Plaintiff's Exhibit 6:

Burr's Map of 1836,

Legend "Les Lac Vieux Desert."

Group of Six lakes draining all three ways—to the Mississippi, to Lake Superior, and to Lake Michigan.

Plaintiff's Exhibit 8:

Tanner map of 1836,

Legend "Lakes of the Desert", grouped as in Exhibit 6.

Plaintiff's Exhibit 9:

Another Burr map of 1836,

Legend "Lac du Vieux Desert." Group draining as in Exhibit 6.

Plaintiff's Exhibit 59:

By J. Calvin Smith, 1840.

Legend "Lake of the Desert."

One small lake at the head of the Montreal similar to the one in Group on Exhibits 6, 7, 8.

Defendant's Exhibit 113:

Canadian Map, 1756.

Legend "Lac des Vieux Deserts" draining into Mississippi.

Defendant's Exhibit 114:

Same 1763.

Legend same.

Defendant's Exhibit 115:

Same 1755.

Defendant's Exhibit 116:

Canadian map 1720.

Legend "Lake of the old Desert" drainage into Mississippi.

Defendant's Exhibit 117:

Canadian map 1763.

Legend "Desert Lake." Drainage into Mississippi.

Defendant's Exhibit 118:

Canadian map 1755.

Legend "R and L of the Desert." Drainage into Mississippi.

Defendant's Exhibit 131:

Farmer's Map of Wisconsin Territory 1829.

Legend "Lac Vieux Desert." Drainage into Montreal.

Defendant's Exhibit 134:

Burr map 1841 or earlier.

Legend "The Lakes." 5 lakes in group.

Indian village on southernmost lake; draining into Wisconsin River. (Present Lake Vieux Desert.)

"Lac Vieux Desert" on most northerly draining into Montreal. (Present Island Lake or Pine Lake).

Defendant's Exhibit 141:

Nicolet map 1843.

Legend "K etti Kittigan or Vieux Desert L".

Drainage into Wisconsin river.

Defendant's Exhibit 142:

Gray map 1846.

Legend "Lake of the Old Gardens of Lac Vieux Desert."

## APPENDIX "B"

List of Exhibits indicating that Strawberry Passage and Porte des Morte were the "most usual ship channel."

Plaintiff's Exhibit 5:

Farmer's Map of 1830.

Indicates nearly correct knowledge of these passages and incorrect as to balance.

Plaintiff's Exhibit 12:

Tanner Map of 1839.

Accurate as to these passages—inaccurate as to Rock Island passage or western passage.

Plaintiff's Exhibit 43:

Map of Public Surveys in Wisconsin in 1846. Same condition as to knowledge of the other channels.

Plaintiff's Exhibit 57:

Historical Articles telling of use of east shore.

Plaintiff's Exhibit 59:

Smith Map 1840 still inaccurate as to other passages.

Plaintiff's Exhibit 83:

Schoolcraft memoirs, showing travel up east shore.

Plaintiff's Exhibit 93:

Schoolcraft Journal showing trip thru Strawberry Passage and Death's Door (Petit Detroit) in 1836 and meeting Steamer in Strawberry passage — see Testimony, Record p. 397.

Plaintiff's Exhibit 97:

Sketch from the Survey under Cram in 1842, of Porte des Morte and Strawberry passages.

Plaintiff's Exhibit 98:

Report of the above survey.

Plaintiff's Exhibit 99:

First Chart of Rock Island passage dated 1864, from survey of 1863. This chart does not disclose St. Martin's or 9 ft. shoal in the passage (see Exhibit 115.)

Plaintiff's Exhibit 100:

First Chart of Passage West of Chambers Island, dates 1864, from survey of 1863.

This chart does not disclose thereof making west from Chambers Island shown on Plaintiff's Exhibit 116.

Plaintiff's Exhibit 101:

Chart of West Coast of Green Bay, survey of 1865, showing last mentioned shoal for first time.

Plaintiff's Exhibit 102:

Chart of Entrance—survey of 1864, revision of 1905; first indication of St. Martin's or 9 ft. shoal in Rock Island, (this shoal had been first mentioned in Sailing Directions 1873) is marked by a buoy the date of establishment of which is not of record.

Plaintiff's Exhibit 114:

Latest Chart of Entrance.

Plaintiff's Exhibit 115:

Latest Chart North End of Green Bay.

Plaintiff's Exhibit 116:

Latest Chart South End of Green Bay.

Plaintiff's Exhibit 117:

Pages from folder of Goodrich steamship lines, 1924, showing use of Strawberry passage.

Plaintiff's Exhibit 188:

Extracts from "Sailing Directions for Lake Michigan, Green Bay, and Straits of Mackinac" 1906, by Hydrographic Office, U. S. N.

Plaintiff's Exhibit 119:

Extracts from "Scott's New Coast Pilot" 1886. Sailing Directions from Chicago to Green Bay via Death's Door.

Plaintiff's Exhibit 124:

"History of Great Lakes," 1899, showing Green Bay as only important port in early days.

Plaintiff's Exhibit 126:

Photographs of ruins of a lighthouse on Plum Island.

There is no record of the establishing of any government lighthouse in Porte des Morts until 1848, an appropriation was made for that purpose, the resulting light on Pilot Island going into operation 1850.

From the Photographs some idea of the age of the ruins can be had. Capt. Peterson testified that he saw the ruins in 1870, Record p. 2. Capt. Betts saw the light burning 1845 and knew the name of the keepers and that it was discontinued in 1850 when Pilot Island light was built. Record p. 27-30.

Plaintiff's Exhibit 127:

Photographic view across the Channel "Porte des Morts."

Plaintiff's Exhibit 128:

Extracts from History of Door County showing travel by these passages.

Plaintiff's Exhibit 134:

Extracts from "Centennial History of Menominee County" showing its importance as a port began in the sixties.

Plaintiff's Exhibit 155:

Showing an early trip through these passages.

Plaintiff's Exhibit 156:

Same.

Plaintiff's Exhibit 163:

Same.

Plaintiff's Exhibit 180:

Extracts from "Barnet's Coast Pilot" for years 1867-71-72-74, showing original knowledge of these channels and growth of knowledge of the others.

## RECONCILIATION

At the time this case was presented on motion, a map by Tanner, found in the Library of Congress, (Plaintiff's Exhibit 12), was supposed to bear date

1830. This map like the Judson map, showed a continuous water boundary.

Because of this Plaintiff took the position, Paragraphs 2 and 5 of the Bill, and page 4 of Brief on Motion, that the Senate Committee in 1834, believed there was a continuous water boundary.

Being further led to this conclusion by the report of Capt. Cram which assumed that Congress had been so mistaken at all times.

Testimony of Col. Martin, pages 661-662, the production of a different map by Farmer in 1830, not showing these conditions (Defendant's Exhibit 13) with a further study of the date on Exhibit 12 seems to indicate that 1839 is the correct date on Exhibit 12.

If it were 1839 the result is merely to indicate that Congress was at no time mistaken upon the subject of a continuous water boundary.

It now appears that no map showing a continuous water boundary existed before the Judson map of 1838.

Plaintiff has always claimed that Congress was not so mistaken at the time of the passage of the Michigan Enabling Act and hence the question is merely academic.

## MICHIGAN'S CONSTITUTIONS

Michigan's first constitution (1835) did not contain a description of her boundaries. This constitution was adopted prior to the act of Congress giving Michigan statehood.

The constitutional convention that framed the constitution of 1850 faced the importance of stating a description of the boundaries varying somewhat from that in the Michigan grant, because Capt. Cram had reported that Lac Vieux Desert was the lake which



Congress called Lake of the Desert and which Capt. Cram reported Congress thought was at the head of the Montreal, and because of his report that the same was an essential point in the boundary. Wilderness continued to reign supreme in that part of the country and the convention had the right to believe and had no reason to disbelieve the Cram reports. Therefore in providing the description of the boundary in the constitution because of the misinformation which those reports contained, the line of the boundary was deflected from that described in Michigan's grant to the extent that in leaving the headwaters of the main channel of the Montreal river the constitutional description of the boundary was made to run to Lac Vieux Desert and then to the head of the Brule, instead in a direct line from the head of the Montreal to the head of the Brule.

The description in the 1850 constitution is as follows:

“\* \* \* \* thence through the middle of the main channel of the said River Montreal to the head waters thereof; thence in a direct line to the center of the channel between Middle and South Islands in the Lake of the Desert; thence in a direct line to the southern shore of Lake Brule; thence along said southern shore and down the River Brule to the main channel of the Menominee river; thence down the center of the main channel of the same to the center of the most usual ship channel of the Green Bay of Lake Michigan, thence through the center of the most usual ship channel of the said bay to the middle of Lake Michigan. \* \* \* \*”

This convention had no power to surrender property. On the other hand, its positive declaration as to the right of the State negative acquiescence in Wisconsin's claims to a large portion of the boundary, for it follows exactly the description in the Michigan grant

through the Montreal, Brule, and Menominee rivers and Green Bay.

The constitution adopted in Michigan in 1909 contains the following description:

“\* \* \* \* \* thence through the middle of the main channel of the westerly branch of the Montreal river to *Island Lake*, the headwaters thereof; thence in a direct line to the center of the channel between Middle and South Islands in the Lake of the Desert; thence in a direct line to the southern shore of Lake Brule; thence along said southern shore and down the River Brule to the main channel of the Menominee river; thence down the center of the main channel of the same to the center of the most usual ship channel of the Green Bay of Lake Michigan; thence through the center of the most usual ship channel of the said bay to the middle of Lake Michigan. \* \* \* \* \*

By that convention all possible theories were negatived so far as could be with the knowledge of the situation then at hand. The convention was exactly in the same situation as the convention of 1850 as to the knowledge of the country; except as to the one discovery that the east branch of the Montreal river instead of the west branch had been used as the boundary and that the claimed boundary stopped short of following even the east branch to the lake at its head. The convention with that knowledge, but still relying on Capt. Cram's report that Lac Vieux Desert was an essential point in the boundary, emphasized the fact that the west branch of the Montreal with Island Lake at its head, was the main channel and a part of the boundary. Because of lack of knowledge and misrepresentations, the line was then deflected to the Lake of the Desert, instead of taking the direct line as provided in the grant.

It was not until the Michigan boundary Commission was appointed in 1919 that the true facts were discovered concerning the errors of Capt. Cram and the knowledge possessed by Congress in laying down the original grant. It then became known through an examination of those maps that Congress knew that the lake at the head of the Montreal river was one of the Lake of the Desert.

A reading of the boundary descriptions found in the Michigan constitutions indicates clearly two things: first, that the officials of Michigan were endeavoring as best they could to describe a boundary that would conform with the boundary intended by Congress, and, second, that the knowledge gained by the officials of Michigan can only be construed as overcoming any acquiescence in any boundary line except the one in the original grant.

DAVIS REPORT—*Defendant's Exhibit No. 380.*

The defendant's request that Exhibit No. 380 and the attached extracts from the Journals of the Michigan Legislatures be printed in the Record indicates that Wisconsin relies on that exhibit as an important fact in the case. Because of that and the stipulation concerning the report on page 1012 of the Record, we deem it advisable to discuss the facts in that connection and their relevancy.

On May 29, 1907, the House of Representatives of Michigan adopted a resolution in which the following language appears:

“That the Attorney General of the State be, and hereby is, authorized and directed to cause a survey to be made of so much of the boundary line.

between the said states as is claimed to be incorrect, and to institute the necessary proceedings in a court of competent jurisdiction or otherwise to secure a determination of the correct boundary line between the State of Michigan and the State of Wisconsin."

On June 4, 1907, the House was advised that the Senate had concurred in the adoption of that resolution.

On May 5, 1909, Hon. John E. Bird, then the Attorney General of Michigan, wrote a letter to the chairman of the Senate Committee on State Affairs, advising him that he had engaged the services of Prof. J. B. Davis, and that.

"\* \* \* \* we have made such investigation as enable us to place before the Legislature a complete history of the legislation and directions of the War Department leading up to the location of the present line, together with a large number of other facts obtained from a personal investigation and inspection of the line.

It is not quite clear from such resolution whether it is the desire of the Legislature that I should add to this history my conclusions, legal and otherwise, upon the facts found. If such be the desire of the Legislature, I suggest that you so indicate by a resolution. \* \* \* \*"

On May 11, 1909, the Senate adopted a resolution containing this language:

"\* \* \* \* That the Attorney General be and is hereby directed to add his conclusions of law and fact upon the record so compiled by him; to procure copies of such maps and add to his report as he deems advisable to make the situation more easily understood, and to cause the same to be printed and submitted to the next session of the Legislature."

On May 12, 1909, the House concurred in the Senate resolution.

The report of J. B. Davis appears to have been signed by him and bears the date 1909-4-1. It is therefore apparent that the investigation made by Prof. Davis was completed before April 1, 1909.

The stipulation (Record page 1012) contains this language:

“And that so far as Judge Bird formed any conclusions on the subject, they were those of the Davis report.”

John E. Bird, was appointed to the Supreme Court bench in the State of Michigan and resigned as Attorney General June 6, 1910. He never filed a report with the legislature of this State nor was any report ever filed by his successors in office.

The so called Davis report never became a public document. The most that could be said for it was that it was a private memoranda of certain investigations made by a privately employed agent of the Attorney General. The original engagement of the Attorney General was that he was authorized and directed to cause a survey to be made of a certain portion of the boundary, etc. The legislature did not direct the Attorney General to employ agents to make an investigation of the facts involved. The only report required by the legislative branch of this State was the report mentioned in the Senate resolution of May 11, 1909. This of course was never done.

It will be apparent from an examination of the Davis report that Davis made only a superficial investigation of the controversy involving the Montreal section of the boundary. His report contains some of

the Act of Congress; some of the Acts of the legislatures of the two States; some of the maps; and some of the historical letters and papers which throw light on this controversy. It will not be claimed that Davis collected all of the relevant data available. The record and exhibits in this case overwhelmingly controvert any such claim.

Nothing in the report indicates that Davis made a survey of the portion of the boundary then under consideration. It does not even appear that the conclusions and findings of fact embodied in this report were the result of personal observations or investigations of Prof. Davis. On the contrary, he speaks in the report and copies verbatim from letters written by H. L. Fruend, whom Davis designates as his "helper". Of this man, Fruend, nothing is known. Even Davis does not suggest that Fruend's report is reasonably comprehensive and accurate.

The Davis report was not binding on the Attorney General. It is quite possible that the Attorney General might have recommended to the legislature that a suit be brought to finally determine the boundary notwithstanding any adverse delineation of facts suggested by Davis or his helper.

We fail to see by any possible interpretation of exhibit 380 how the Attorney General was bound—much less the State of Michigan. The Attorney General never made any report to the legislature body of this State and it is beside the question to say what that report would have contained had it been made.

We therefore respectfully submit that exhibit 380 has no probative value in this case; that it is a self-serving document prepared by some person or persons with no official engagement from the legislature of this

State; that it is a privileged communication from a private employee of the Attorney General; that it is not a public record and was never intended to become public; that it was of no binding force or effect on the Attorney General or the State of Michigan.

#### MICHIGAN HAD THE RIGHT TO BE AT EASE.

Congress recognized that the United States could not again grant what it had already granted to Michigan and because of the possibility of a conflict as to the Michigan boundary a proviso was inserted in the Wisconsin Enabling Act providing:

“That the adjustment of the boundary as fixed by this act between Wisconsin and Michigan shall not be binding on Congress unless the same shall be ratified by the State of Michigan on or before the 1st day of June, 1858.”

It must be clear from this that it was then recognized by all parties that Wisconsin's grant would not be effective as to such territory as should be found to be within the lines of Michigan's described boundary unless Michigan ratified the Wisconsin act within the time specified. Because of this provision and because of the said several reports, Michigan had the right to believe that the Wisconsin line was little if any different from the Michigan line, and that Wisconsin would yield to the Michigan line, in case of differences being discovered, unless Michigan gave way to Wisconsin, by ratifying the Wisconsin line within the specified period. No such ratification was asked or granted, and so Michigan had the right to believe Wisconsin was respecting and acknowledging Michigan's rights.

Thus, all the claim that Wisconsin then made to any

of the territory which is involved in this proceeding was *under her grant* of August, 1846, *subject* to Michigan's right under her prior grant of 1836, unless Michigan should waive that right *within the specified time*. Not having secured the waiver the grant to Wisconsin did not become operative as to the disputed tracts. May 29th, 1848, within the period when Wisconsin was privileged to get Michigan's ratification, Wisconsin was admitted into the Union with boundaries as described in her enabling act; that is subject to Michigan's prior grant, in any point where the boundaries conflict, unless Michigan's ratification should be secured. Thus again we have Wisconsin assurance or respect for Michigan's boundary when Wisconsin accepted Statehood May 29th, 1848; Michigan had the right to feel secure.

Furthermore, Wisconsin's grant of Statehood was upon her having adopted a constitution.

In that constitution she expressly states,

“that the State of Wisconsin doth consent and accept of the boundaries prescribed in the Act of Congress. \* \* \*,”

and there describing her enabling act, and following with a detailed description of the boundaries.

Here we again call attention to the *proviso* in the enabling act making the boundary subject to Michigan's and in that connection we call attention to the section of the Wisconsin Constitution next succeeding the one describing the boundary, which reads:

“Section 2. The propositions contained in the act of Congress are hereby accepted, ratified and confirmed and shall remain irrevocable without the consent of the United States.”

While there were other propositions contained in



the act of Congress, we claim that this section is broad enough to and does accept, with others, the provision was also accepted by Section 1, where the Constitution expressly accepts the boundaries described in the act, and which *as* described in the act were provisional. So that, aside from Michigan's knowing that she was entitled to priority and not knowing there was really any, but being advised there was none of consequence, Michigan had all these assurances of Wisconsin that Michigan's priority of right would be recognized in case the several boundaries should be found to conflict, Michigan had the right to be at rest.

One further feature of Wisconsin's Constitution of importance in this immediate connection is the fact that in the description of her boundaries through Lake Michigan and Green Bay, Wisconsin's boundary is described as running

“with the boundary line of the State of Michigan.”

Furthermore, it described her boundaries, after reaching the mouth of the Menominee River, as follows:

“Thence up the channel of said river to Brule river; thence up said last mentioned river to Lake Brule.”

It is an established principle of law where a river is named as a boundary, without other specifications, the center of the main channel is the boundary. Thus the Wisconsin Constitution described its boundary through Green Bay and through the Menominee and Brule Rivers as exactly in accord with the boundary as described in the Michigan grant, and now claimed by Michigan.

This was nearly two years after the Wisconsin enabling act provided for a *different* division of the islands in the river, if Michigan would permit it. Michigan had not permitted it. Michigan's right to the main channel of the two rivers, and to the "most usual" ship channel of Green Bay was unquestionable, and, therefore, by the language of Wisconsin's Constitution, Michigan was further justified in believing that Wisconsin was yielding to and would respect Michigan's boundary.

### ACQUIESCENCE.

The position taken by defendant in its motion to dismiss, indicates that it will insist on the application of the doctrine of acquiescence or one of its kindred doctrines. For this reason the plaintiff here discusses such phases of that question as now seems pertinent.

*Acquiescence* is spoken of in Bouvier's Law Dictionary as follows:

"The acts of acquiescence which constitute an implied election must be decided *rather by the circumstances of each case than by any general principle.*"

The construction given by this court to acquiescence clearly shows that there can be no acquiescence until there is knowledge of facts which will enable the party to take effectual action.

"Acquiescence and waiver are always questions of fact. There can be neither without knowledge. The terms import this foundation for such action. One cannot waive or acquiesce in a wrong while ignorant that it has been committed. Sus-

picion and rumor are not enough. There must be knowledge of facts which will enable the party to take effectual action. Nothing short of this will do."

*Pence v. Langdon*, 99 U. S. 578 25 Law Ed. 420.

This action is between two political sovereigns whose existence and rights arise in the will of the people of the United States as expressed by Congress.

These two political bodies exercise jurisdiction over a tremendous territory and are constantly engrossed in problems of State.

The plaintiff asserts its rights under a clear, unequivocal expression of that will.

This dispute is over the frontier between these two states. A line through territory still but sparsely settled, and to reach portions of which today involve great hardship, even the risk of life. (See testimony of George Rupp, Record page 170).

The most exacting employees of defendant have not even seen some portions of the area and others only since the suit was commenced.

Taxation and surveys are still incomplete.

The exact location of the line claimed to be acquiesced in is unknown in two sectors.

### MONTREAL-VIEUX DESERT.

This is the only sector in which a line has been established. The Burt line was surveyed in 1848 according to the description in the Wisconsin Enabling Act. This description was based upon the erroneous report of a Federal Agent, that the Michigan grant was an impossible line.

This error was discovered in 1920, and this suit commenced as soon as practicable thereafter.

### THE MENOMINEE-BRULE SECTOR.

In this sector there is no line today unless it be the one for which plaintiff contends in this suit.

It is the line described in the first law of each sovereign, the constitutions of the parties hereto, and it is as well, a line granted to plaintiff by Congress.

It was in connection with the discovery of the error as to the Montreal-Vieux Desert sector that the conditions in this sector were brought to plaintiff's attention.

The present condition is utter confusion. The defendant is in possession of some but not all, of the Islands in the Menominee River below the division point suggested by Congress in the Wisconsin Enabling Act. Plaintiff is in possession of other of these Islands, and still others are not now known to be, under the jurisdiction of either State, other than the profession of the respective constitutions as to boundaries.

### GREEN BAY SECTOR.

No line has ever been determined upon in this sector. The grant to plaintiff is clear. The grant to defendant follows the grant to plaintiff. The only indication of any location of the line comes from the possession by the defendant of certain islands. This possession is the direct result of the actions of the same government agent who made the error in the Montreal-Vieux Desert sector. The actions of that agent, Captain Cram, in this sector are the best evi-

dence that such possession is wrongful. The result, however, was not apparent to plaintiff until 1920.

There was no official determination. Official action gave defendant possession of territory granted to plaintiff, and withheld from plaintiff knowledge of the existence of this territory which plaintiff had a right to expect from this official.

Through Captain Cram's survey of this region being returned to Wisconsin for taxation without locating the boundary; defendant obtained possession when government entries were made.

Plaintiff relied upon the Federal government to survey her land and to return to her for taxation all government descriptions within her boundaries, which by entry, became subject to taxation. Knowledge of plaintiff's rights in this sector first came in 1920.

However, it seems to be the rule that surveys made by the officials of the Federal government cannot take away any of the territory embraced in the original grant.

*U. S. vs. State Investment Co.*, 264 U. S. 206.  
*New Mexico vs. Colorado*, 267 U. S. 30.

#### APPLICATION OF THE RULE OF ACQUIESCENCE.

This court has held that the doctrine of acquiescence as applied, between two political bodies, is not in the nature of a bar.

It cannot be availed of to defeat a clear grant or to effect the establishment of a title which would subvert the will of Congress.

1. *It is available only so far as the lapse of time may tend to raise the presumption that a possible con-*

*struction of a doubtful line was a proper construction, or,*

2. *When an agreement or compact in regard to such line entered into by all parties was regularly made, even though the records fail to disclose its regularity.*

Neither of the above conditions are approached in this case in any sector.

The above doctrine is developed from the decisions in this court in the cases of

*Louisiana vs. Mississippi, 202 U. S. page 1.*

*Virginia vs. Tennessee, 148 U. S. 503.*

*Rhode Island vs. Massachusetts, 4 Howard 591.*

Other decisions of this court touching the question of acquiescence as applied between political bodies, can be distinguished from or conformed to the principles which were applied to these cases.

In the above cited case of Louisiana vs. Mississippi, the doctrine outlined under the heading *one*, clearly applies. The boundary therein questioned could be construed in accordance with the claim of Louisiana. Louisiana had been in control for more than fifty years with Mississippi's assent. The lapse of time and assent were considered as having served to place a construction on the otherwise questionable proper location of the boundary. Acquiescence was not permitted to defeat a clear grant.

In the above cited case of Virginia vs. Tennessee, the case falls squarely under the two doctrines above stated, the court making use of the doctrine of acquiescence to sanctify the compact entered into by commissioners of the two states and ratified by the legislature of both states.

In the above cited case of Rhode Island vs. Massachusetts, the principles involved as above set forth, are there fully discussed by the court. The question in that case was as to whether or not a commission acting under evident authority from both states, had made a mistake in construing the language of the grant on a point in relation to which the language of said grant was doubtful.

The grant to Massachusetts was the prior grant, and the language of that grant describing the line was

“Three miles south of the Charles River, and the most southerly part thereof.”

The question was asked as to whether this line should be three miles south of the most southerly point in the bed of the Charles River or three miles south of the most southerly point in any tributary of the Charles River. Both states appointed commissioners, who signed an agreement in regard to the line, which line was sanctioned by the plaintiff indirectly. Later new commissioners were appointed who also signed an agreement. This latter agreement being accepted by the General Assembly of Rhode Island and Massachusetts, and a joint commission appointed to run the line in accordance with agreement, which commission reported its inability to find a point named in the agreement, but claimed to have located the correct spot for the existence of that point.

After discussing the claims made by complainant, the court says:

*“The Charter is of doubtful construction, and may, without doing violence to its language, be construed in favor of or against the complainant. IN THIS VIEW the construction of the Charter by Massachusetts, assented to by the old colony of*

Plymouth many, many years before Connecticut or Rhode Island had a political organization, *is an important fact in the case*. Plymouth was interested in restricting the lines to the calls of the Charter for the line constituted the common boundary between the two colonies. *And, as controversies had arisen respecting the boundary, and commissioners been appointed to settle it, the presumption is that the rights of both colonies were understood and respected in the establishment of the line \* \* \* \** **IN THE ABSENCE OF PROOF THE PRESUMPTION IS NOT TO BE DRAWN THAT THEY SUPPOSED** *the line established was only three miles south of the river. Connecticut, after the lapse of many years, assented to the line run from the Woodward and Saffrey station, as its boundary, AND SO DID THE COMPLAINANT, in most solemn agreements, as stated. These proceedings conduce strongly to establish a fixed construction of the charters, favorable to respondent, UNLESS it be clearly made to appear they were founded on mistakes or fraud.*

Fraud is not charged, and we have only to inquire into the alleged mistake.

From the nature of this supposed mistake it is scarcely susceptible of proof.

The court, after further discussing the investigations made by the Commissioners, and the improbability of their having been mistaken, said:

“The dispute is between two sovereign and independent states. It originated in the infancy of their history, when the question in contest was of little importance, and *fortunately, steps were early taken to settle it, in a mode honorable and just*, and one most likely to lead to satisfactory result. *There is no objection to the joint commission in this case, as to their authority, capacity, or fairness of their proceedings. An innocent mistake is all that is alleged against their decision.*



And, as has been shown, *this mistake is not clearly established, either in the construction of the Charter, or as to the location of the Woodward and Saffrey Station.* But, if the mistake were admitted as fully and broadly as stated in the bill, could the court give the relief asked by the Complainant?"

The court, then, after dwelling upon the fact that the *agreement* had been allowed to stand unchallenged for forty-one years when that opinion was given, said:

*"The possession of the respondent was taken, not only under a claim of right, but that right, in the most solemn form has been admitted by the complainant and by the other colonies interested in opposing it. Forty years elapsed before a mistake was alleged, and since such allegation was made nearly a century has transpired. \* \* \* \**

It is not clear that the calls of the charter were deviated from by establishing the station of Woodward and Saffrey. But if in this report there was a deviation, Rhode Island was not the less bound, for its Commissioners were authorized to compromise the dispute. Surely this, connected with the lapse of time *must remove all doubt as to the right of the respondent under the agreements of 1711 and 1718.* No human transactions are unaffected by time. Its influence is seen on all things subject to change. *And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade with the lapse of time, and fall with the lives of individuals.* For the security of rights, whether of states or individuals, *long possession under a CLAIM of title is protected.* And there is no controversy in which this great principle may be involved with greater justice and propriety than in a case of disputed boundary."

The case resolves itself into a statement of the law, that, the proper location of the described boundary

having been a matter of doubt, to the extent that the charter might, with reason, have been interpreted in accordance with the claims of either party, and the parties having by mutual agreement come to a conclusion on the line, and the line having been located accordingly, and Massachusetts having, for one hundred forty years after such agreement, claimed title under her charter and said agreement so construing it, with the full knowledge and *express* assent of Rhode Island, the latter could not have relief. And in so holding, it was recited that the claimed mistake in the agreement had not been supported by proof, and that the court would presume that the Commissioners who made the agreement understood the facts and circumstances.

It is significant, in this connection, that, although holding that, in a case of doubtful interpretation, like the location of the Massachusetts-Rhode Island boundary, the agreement, together with long possession pursuant thereto would establish the line, the court also, in speaking of the claim of Rhode Island that the Charter of Massachusetts had been misconstrued, and that, properly construed, the line should have been run as Rhode Island was contending (page 633) said:

*“If the words of the charter were clear and unequivocal in this respect, there would be great force in this argument. It would be DECISIVE of this controversy, unless controlled by other facts and circumstances in the case.”*

Applying the last quoted statement by the court, to the instant case, it must be concluded that if the description of the boundary, as set forth in the Michigan Act of June 15th, 1836, is unambiguous, and should be interpreted in accordance with Michigan's claim, as to any portion of the disputed boundary, then, as to

that portion, *such construction "is decisive of this controversy, unless controlled by other facts in the case."*

Briefly comparing further the Massachusetts case with the case at bar, the court there stated that the river boundary contained an ambiguity. The language of the description might be interpreted to mean the northernmost point of the main channel of Charles River, or the most northerly point of a branch thereof, considering the branch a part of the river. In the case at bar the language is explicit, the country being new and the details not definitely known to Congress, Congress made the description explicit by specifying the *main channel* of the Montreal River. This left nothing ambiguous. It simply remained to establish which was the main channel. According to the record that has never been done. When Captain Cram surveyed the east branch he was not authorized to locate any part of the boundary. That was on his second trip when he was to make a map for the information of Congress, and he did not survey or report the main channel, as the record shows.

In the case at bar there is no ambiguity, and the errors and misrepresentations complained of are matters of record which have been recently discovered to be errors and misrepresentations. So it is clear that that case in no way supports defendant's theory of acquiescence by Michigan, but, on the contrary, is a substantial authority in support of the plaintiff's theory that the unambiguous line in a direct and positive grant cannot be modified by lapse of time or possession, and that even against lapse of time, equity will relieve as against mistake or fraud.

Other cases determined by this court have squarely

upheld the doctrine announced in the cases above cited. We do not deem it necessary to here repeat the facts in each case or quote at length from the opinion of this court applying the doctrine or establishing a rule for that particular case. Attention, however, is drawn to the following cases, wherein the question of acquiescence either by a possible construction of a doubtful line or a confirmation of an agreement or compact entered into between the parties defining the line, is discussed.

*Virginia vs. Tennessee*, 148 U. S. 503.

*Arkansas vs. Tennessee*, 246 U. S. 158.

*North Carolina vs. Tennessee*, 235 U. S. 1.

*United States vs. Texas*, 162 U. S. 867.

*Maryland vs. West Virginia*, 217 U. S. 41.

The area now in dispute is today exactly what it was when Congress defined it in 1836. It has not been changed by the War Department, the United States Land Office, the Legislature of either State, the map-makers and cartographers, the historians, civil engineers, geologists or civil authorities of either state; nor by the act of either state in taking possession of parts of the territory in dispute. It was firmly established by Congress, the only body having such original power; it could not be changed but with the concurrence of that same power.

The improvements within the area have been more than paid for by the taxes already collected from it by defendant. Its transfer to plaintiff means nothing to anyone except a change of jurisdiction. Such minor difficulties as may be occasioned by this transfer can be cared for by this court in its equitable jurisdiction.

There can be no acquiescence without knowledge, and knowledge was withheld from plaintiff, without its

fault, until shortly before the commencement of this suit.


There can be no acquiescence in a line which is not definite and certain. The doctrine can only be applied where lapse of the required time during possession up to a definite line has occurred. There is no such possession in this case, particularly in the Menominee-Brule sector, and in this respect a failure at one point would effect a complete failure, since acquiescence involves consent to a grant, and a grant which fails in any one point is incomplete and ineffective.

It is the very essence of title by prescription that the possession during the required period be hostile. A possession must be openly and notoriously against the right of plaintiff; such a possession as would amount to a *continuing notice* during the entire period with plaintiff's failure to act.

In the case at bar defendant's possession was not openly and notoriously hostile and against plaintiff's rights until 1920. Plaintiff had the prior grant. Defendant took claim to plaintiff's rights. No right of the plaintiff to any territory possessed by defendant was apparent to either party until the discovery of Cram's error by the boundary Commission in 1920.

The disputed area was never granted to Wisconsin, since its grant, so far as it might affect the prior grant to Michigan, was conditioned on ratification by Michigan.

Wisconsin cannot show title by prescription since her possession was not hostile for a sufficient period, if at all.



WISCONSIN'S POSSESSION WAS NEVER HOSTILE BUT IN THE NATURE OF A TENANCY AT WILL OR SUFFERANCE.

Wisconsin accepted a boundary conditional upon ratification by Michigan before the time for ratification had expired. This was done with full knowledge of the prior grant to Michigan, and of the fact that the line of said grant had been reported impossible.

It may well be held that Wisconsin entered into possession of any and all territory within the boundary of Michigan, with full knowledge of the prior grant and as a tenant at sufferance of the plaintiff.

To apply any doctrine of acquiescence or laches against the plaintiff is to charge the plaintiff with the knowledge in 1846, that the Michigan grant was a possible line. If the plaintiff be chargeable with this knowledge, surely the defendant is also, and in that event, defendant took possession, subject to Michigan's consent, of land, which defendant knew belonged to plaintiff. It is a well established principle, that one entering possession as a tenant, cannot thereafter change the character of its possession so as to claim adversely to its landlord. The taking of possession by Wisconsin prior to the period within which it was permitted to obtain the consent of Michigan to its grant, must be construed as a tenancy of sufferance, since Wisconsin took possession knowing that Michigan had the right to give or withhold the land. Such possession is inadvertent and could not become advertent under the general principles of law.

## MICHIGAN NEVER RATIFIED THE WISCONSIN BOUNDARY GRANT.

Michigan was never asked to ratify and never ratified the boundary described in Wisconsin's Statehood act. Not having done so, neither Congress nor Michigan are bound by any territorial grants so far as the area in dispute in this case is concerned. Upon this point we respectfully refer to the opinion of Chief Justice Marshall in the case of *Doddridge vs. Thompson*, 9 *Wheaton*, 476, in which a similar point was explicitly passed upon. In that case the court said:

“In March, 1804, Congress passed a law for ascertaining the boundary of the land reserved by the State of Virginia for military bounties, which enacts, ‘that the line run under the direction of the Surveyor-General of the United States, from the source of the Little Miami towards the source of the Scioto, and which binds, on the east, the surveys of the lands of the United States, shall altogether with its course continued to the Scioto River, be considered and held as the westerly boundary line, north of the source of the Little Miami, of the territory reserved by the State of Virginia, between the Little Miami and the Scioto rivers, for the use of the officers and soldiers of the continental line of that state. Provided, that the state of Virginia shall, within two years after the passing of this act, recognize such line as the boundary of the said territory.’ The line mentioned in this act is called Ludlow’s line.

This act shows, we think, very clearly, that Congress did not mean to assert a power to fix the western boundary of the military reserve. The deed of cession, and the act of acceptance, were considered as forming a contract respecting a territory, the western line of which could not, at the

time, be fixed with precision, and which was unavoidably described in terms requiring subsequent explanation and adjustment. This adjustment was to be made, not by one of the parties, but by both; and this act is an essay towards it. Congress makes a proposition to Virginia, by which the United States are to be bound, provided Virginia accepts it within two years. If it be not accepted within that time, the parties stand on their original rights, as if it had never been made. This is a **very fair and equitable** proceeding on the part of the government, and is founded on the idea that the rights of the parties are equal. Had Virginia accepted this proposition, it would have become a contract, and Ludlow's line would have been established as the western boundary of the military reserve; the land in controversy lying west of that line, would not have been liable to be surveyed to satisfy the plaintiff's warrant. But Virginia did not accept the proposition, and the rights of the parties remained as if it had never been made.

In 1812, Congress made another effort to establish this line. The President was authorized to appoint three commissioners, to meet commissioners to be appointed by Virginia, who were to agree on the western line of the military reserve, and to cause the same to be surveyed and marked out. Should commissioners from Virginia fail to meet them, they were to proceed alone, and make their report to the Executive. In the meantime, and until the line should be established by consent, Ludlow's line was to be considered as constituting the western boundary of the Virginia reserve.

The commissioners of the United States were met by those of Virginia, and they proceeded to ascertain the sources of the two rivers, and employed a Mr. Charles Roberts to survey and mark a line, from the source of one to that of the other. This line is called Roberts' line, is reported by the commissioners to the Executive, and is found, in the case agreed, to represent truly a line drawn from the source of the Little Miami to the source



of the Scioto. The Virginia commissioners, however, refused to accede to this line, and claimed to run from the source of the Scioto, a straight line to the mouth of the Little Miami, which would pass south of that river, and include a considerable tract of country not lying between that river and the Scioto. This demand prevented an agreement establishing Roberts' line; and as the act of June, 1812, provisionally designated Ludlow's line as the western boundary of the reserve, until one should be finally established, with the consent of Virginia, it remains the boundary for the present. Had the plaintiff's title been acquired subsequent to the passage of this act, there would be much force in the objection to it; but it was acquired before this act passed, and cannot, we think, be affected by it. Congress cannot have intended to annul, by a legislative act, a title which was valid at the time; and a law which does not express that intention ought not to have that effect given to it by construction. If the words of the act of 1804 were doubtful, which they are not, the act of 1812 would expound them, and show that not even a temporary boundary had been previously fixed. The appointment of commissioners to meet others to be appointed by Virginia, who were to agree upon and mark the true line, and the establishment of a temporary line till such agreement should be made, prove incontestably that Congress did not suppose the line to be established. Had the commissioners from Virginia assented to the equitable proposition made by those of the United States, the plaintiff's patent, founded on a survey made before that time, would be admitted to be unassailable. And yet the land was, in fact, within the territory actually reserved at the time the survey was made, and no law had been passed substituting any other line for the true one."

In *Reynolds vs. McArthur*, 2 Peters, 417, Chief Justice Marshall, delivering the opinion of this court, said:

“It has already been stated that the Act of 23rd of March, 1804, establishes Ludlow’s Line, not absolutely, but on conditions that Virginia should assent to it; and that Virginia never did assent to it.

It has also been stated that in 1812, Congress authorized the President to appoint Commissioners who should proceed in concert with such as might be appointed by Virginia, to run a line which should constitute the western boundary of the Virginia military reserves. These Commissioners did meet and did cause a line to run from the source of the Little Miami to the source of the Scioto. This is called Roberts’ Line. The Commissioners of Virginia did not assent to this line. Consequently it is of no operation.”

### CONCLUSION.

The plaintiff contends and we respectfully submit the record shows the following:

1. That Congress had before it a considerable amount of information showing the Lakes of the Desert to be a large group of lakes; that one of the lakes marked in that group was the headwaters of the Montreal River.

2. That Congress intended the Montreal and Menominee rivers as natural boundaries; that a straight line drawn between the headwaters of the two river systems would complete the boundary between the States.

3. That Captain Cram had in his possession the Judson map which erroneously showed both rivers—the Montreal and the Menominee—as rising in a large lake marked “L. Vieux Desert.”

4. That Captain Cram thought that Congress was misled by that or a similar map.

5. That Captain Cram reported back to Congress that since there was no lake at the head of the Montreal river, the large lake he called Lake Vieux Desert must be the lake referred to by Congress—and therefore an impossible line had been defined.

6. That Captain Cram's error arose from erroneous information from Indians to the effect that there was no lake at the head of the Montreal river.

7. That Douglas Houghton, State Geologist, reported to Governor Woodbridge of Michigan, information he had obtained from Captain Cram, concluding that the line defined by Congress was an impossible line.

8. That several bills were introduced in Congress to redefine the Michigan boundary according to the recommendations of Captain Cram. None of these bills were passed.

9. That Congress in admitting Wisconsin to the Union in 1846 recognized a controversy in the Michigan boundary and provided that the Wisconsin line would not become binding unless the same "shall be ratified by the State of Michigan on or before the first day of June, 1848."

10. That Wisconsin never requested Michigan and never received in any manner or form any ratification by Michigan of the Wisconsin boundary grant; that Wisconsin's boundary line has ever since and today remains conditional.

11. That the area involved was first occupied by lumbermen who were indifferent as to the title to the land; that after logging operations were over the lands were considered only as wild and waste lands and until recent years in most portions have any considerable acreages been set up for taxation.

12. That even today Wisconsin is not exercising any jurisdiction over certain islands in the Menominee river and Green Bay.

13. That Captain Cram's error as to the Montreal sector were not discovered until 1907.

14. That Michigan attempted by legislative action in 1907 to negotiate with Wisconsin and if possible conciliate the differences then known to exist; that Wisconsin refused to arbitrate.

15. That Michigan tried in 1919 by the creation of a boundary commission to again settle the boundary and was again met by Wisconsin's refusal to confer or negotiate a settlement.

16. That the investigations carried on by the Michigan boundary commission further developed the errors made by Captain Cram; also advised Michigan for the *first* time that Congress had laid down in the Michigan grant, not only a possible line but had in fact there determined the true boundary.

17. That Michigan has not slept upon her *known* rights, has not been guilty of laches nor has she acquiesced in the conflicting claims of Wisconsin; that any occupation of territory by Wisconsin within the Michigan grant was solely because of misinformation given by Federal representatives, on which reports she did and was entitled to rely.

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Finally, the attention of the court is called to the fact that the State of Michigan, in the spirit of sisterhood and union—the spirit which made the independence and greatness of this nation possible—has endeavored since 1907, when the true facts concerning one sector of this disputed boundary became known, to amicably adjust these differences with Wisconsin.

Repeated efforts met the same rebuff. Michigan lost valuable territory in the congressional settlement of the "Toledo War". Congress then sought to compensate Michigan for this loss by giving her territory south of Lake Superior. We are here asking only for the territory Congress *intended* we should have. A decree settling for all time such a boundary will conform to the intention of Congress and do justice to all interested parties.

We respectfully submit the record in this case justifies a decree as prayed for in the bill.

Respectfully submitted,

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## APPENDIX 1

## EXHIBITS PRINTED IN THIS BRIEF.

Plaintiff's Exhibit 179 reproduced opposite page 9 is a copy of the Burr map, which was attached to the report of judiciary map in the House of Representatives March 2, 1836, being a report on the Thomas Bill which contained the first language defining the boundary now in dispute. This map is offered to show the knowledge of the territory along the disputed line, in the possession of the draftsmen of the House of Representatives and the Judiciary Committee of the House, and especially to show that at about this date there was a considerable increase in knowledge in relation to this area, which resulted in the changing of the map, as will be seen by reference to the next exhibit.

Plaintiff's exhibits six and seven, are copies of the map which is Exhibit A of the Bill of Complaint, which is reproduced in the brief opposite page 9.

The map reproduced is an exact copy of the map, attached by Mr. Casey, of the Committee on Territories of the House of Representatives, to his report, and on this map are lines which do not appear on the two copies of the same map Exhibits 6 and 7. Exhibit 6 is a copy of the same map, and on it appears a blue pencil line indicating the boundary between Wisconsin and Michigan. This map was found among the private papers of Lucius Lyon, who was delegate to Congress in 1836 and was present at the committee meetings when the boundary was agreed upon. Exhibit 7 is another copy of the same map, on which the boundary line is connected in the exhibit, being a photostat copy

of the map on file in the Library of Congress. This exhibit is offered to show that at about this date information in relation to this area had been obtained from Mr. Henry Schoolcraft, whom it is shown, had appeared before the Senate Judiciary Committee on February 19th, for the purpose of imparting knowledge in regard to the geography of the Lake Superior district.

Exhibit 8. Tanner's map of 1836, being a current map at the time of the enactment by Congress, is offered to show the interchangeable use of the words, "Lake of the Desert", "Les Lac Vieux Desert", and "Lac Vieux Desert".

It will be noted that the district as depicted upon this exhibit is identical with the district shown as "Les Lac Vieux Desert" on Exhibits 6 and 7.

Plaintiff's Exhibit 175, which is Exhibit B of the Bill of Complaint, is a copy of the Judson map, a map of the entire territory of Wisconsin and Iowa, published by authority of general legislative assembly of Wisconsin in 1846. A copy of that map which was attached to the first report of Capt. Cram in 1840, and is the map which led Cram to believe that Congress had been misled by erroneous information through a similar map, and defined an impossible boundary. It is the plaintiff's position that the real cause for Cram's error was his possession of this erroneous map.

Plaintiff's Exhibit 59 reproduced opposite page. This map is by J. Calvin Smith, published by J. H. Cotton of the Merchants Exchange in New York in 1840. It is offered largely for the purpose of showing the location of a lake as the headwater of the Montreal River. The maker of this map evidently had be-

fore him, copies of maps (Exhibits 6 and 7) and applied the term "Lakes of the Desert" to the isolated lake at the head of the Montreal River which was the lake referred to by Congress in the Michigan grant.

Plaintiff's Exhibit 113, reproduced opposite page, is a sketch showing the location of the boundary in dispute and the territory involved under the various claims of the parties.



## APPENDIX 2

## LIST OF PLAINTIFF'S EXHIBITS

(With synopsis of their relevancy)

*Exhibit 1:* Map of British and French Dominions of North America—1755.

This map shows the River and Lake of the Desert, the Lake there draining into the Mississippi River. No Montreal River is shown although the Menominee is indicated as entering Bay of Puans—since Green Bay. The lower end of Green Bay is fairly accurately shown and the islands at the Port du Mort's entrance.

*Exhibit 2:* Proceedings of Congress on the bill to permit Michigan to become a State in 1834.

Showing that progress was blocked by the fact that the Judiciary Committee were considering the question of the northern boundary of Ohio.

*Exhibit 3:* Proceedings of Congress in 1836—

Showing the appointment of a Select Committee to consider the admission of Michigan into the Union, which reported the supplementary act for that purpose March 22, 1836.

*Exhibit 4:* Proceedings of the Convention which formulated the Constitution for the State of Michigan, May 11, 1835—

With boundaries the same as the Territory of Michigan.

*Exhibit 5:* Farmer's Map of 1830—

This map as to the islands in Green Bay is very accurate, as to the islands near Death's Door, and also

shows Chambers Island. On the map is a ship channel drawn from Beaver Island to the north of Washington Island up to the south of two other large islands unnamed, and considerably to the south of an island there called Brule. Another ship channel coming up from Chicago, the channel entering the southernmost passage named Petit Detroit. The draughtsman of this map evidently had information that in this southernmost channel was Washington Harbor and Port du Mort, but portrayed them inaccurately, and he also had information as to Eagle Harbor, which is fairly accurately placed upon the map. Sturgeon Bay with sand banks and Port Sable all on the route down through Strawberry Passage to Green Bay. The west shore of the Bay and its north end are entirely inaccurate. This map also shows Lac Vieux Desert draining into the Montreal and the Menominee headwaters very near to it.

*Exhibit 6: Waterv'liet Map.*

This is the map which Lucius Lyon brought back from Washington with him, at the time Congress was fixing the Michigan boundary in 1836, and on it is drawn the boundary up the main branch of the Montreal to the middle of the Lake, thence through the Lake Vieux Desert district to the foot of the lake draining into the Brule. It is also noticeable that this map is accurate as to the islands and harbors on the east coast of Green Bay, but totally inaccurate as to the west coast and the north end and the islands on the northerly portion of the passage.

*Exhibit 7: Is the Same as Exhibit 6, but is a copy taken from the Library of Congress.*

*Exhibit 8: Tanner's Map of 1836—*

As to Port du Mort and Rock Island Passage, both are shown. Washington Island and Rock Island are both shown on the map with a small island to the northeast of Rock Island unnamed which does not as a matter of fact exist. The map indicates Grand Traverse to the north of this and Port du Mort to the south of what is there called Pottawatomie Island and it is noticeable that north of Port du Mort there are two islands there placed and shaped as to correspond exactly with Detroit and Plum Islands as they now exist. It is further noticeable that Beaver Island and Manitou Island are accurately placed while the north shore of Lake Michigan is entirely inaccurate. An insert of the map shows Lakes of the Desert, the topography being copied from Maps 6 and 7, or at least identical to them. It is further noticeable that tables of steamboat routes are given showing the route from Detroit to Fort Howard—Fort Howard is what is now known as Green Bay—There is a mileage table showing steamers to stop at Great Beaver Island, Isle Brule, Chambers Island, Green Island and Port Howard. There is no island on this map called Isle Brule.

*Exhibit 9: Map of Ohio and Indiana by David H. Burr, 1836.*

On this map the group of lakes called Lac du Vieux Desert are well bunched and are all shown as tributaries of the Montreal, Ontonagon, Menominee, Wisconsin and Vermillion Rivers, respectively, differing from the Map Exhibit 6 and 7 in that the same draughtman in the later maps 6 and 7 later learned that the Lake from which the Montreal river drained was separated from the rest of the group and lay some

distance to the west. On Map No. 6 and Map No. 7 he also changed the terminology from Lac du Vieux Desert to Les Lac du Vieux Desert putting the word "Les" under the small lake at the head of the Montreal, a slight distance to the west of the group, whereas on the former map the entire nomenclature shows to the east of the entire group. There is no apparent alteration of these maps in regard to the location or description of the islands, except that in the earlier map Exhibit 9, a certain passage is marked "Port du Mort's" while in the later map he has the words "Isles of the Grand Traverse" and Port du Mort's Cape, indicating that he had received some further information in regard to these waters.

*Exhibit 10:* Extracts from, a speech in the Senate April 1, 1836, by James Buchanan.

Stating that Michigan had a right to form a Constitution and that when Michigan was admitted to the Union the boundaries of the Territory of Wisconsin would thereby be determined.

*Exhibit 11:* Copy of assent of the State of Michigan of the Act of Congress of June 13, 1836.

*Exhibit 12:* Map of the State of Michigan and Territory of Wisconsin, by Thos. R. Tanner, 1839, constructed principally from the U. S. surveys.

This shows the east coast of Greene Bay accurately from survey. Also Pottawatomie Island, Detroit and Plum Islands, the balance of the islands are inaccurately portrayed, except that the Chambers Island was evidently investigated although it is not included in the survey at that time. The Beaver, Fox and Manitou Islands are shown but not as they actually exist. A group of four lakes is shown called Lakes of the Des-

ert, the larger lake draining into what is called the Montreal River and Lake Superior, and two of the smaller ones draining into the Menominee River. A very heavy line evidently intended to indicate the boundary is drawn up the Montreal River along the north shore.

*Exhibit 13:* Map entitled Map of North America constructed according to the latest information, by Thos. R. Tanner, 1839.

Is so indistinct as to the islands in Green Bay as to be of no value. This differs from Exhibit 12 in the district of the Lakes of the Desert in that a continuous line is drawn from the mouth of the Montreal River to the mouth of the Menominee in such way that it is impossible to determine where one river begins and the other ends. Lakes stretch along the line and the terminology "Ls. of the Desert" spread along this entire district.

*Exhibit 14:* Instructions to Capt. Cram—July 30, 1840.

Capt. Cram is instructed to survey the whole of Green Bay in order to determine which of the ship channels is the most usual, and to survey the line from the head of the Montreal River to the head of the Menominee, in regard to which he is informed. It is said this line must pass through Desert Lake, and that recent information indicates that there are several lakes in this district called Lakes of the Desert, but that the survey will give correct information on this subject, and that he should commence with the survey between the headwaters of the two rivers named.

*Exhibit 15:* Capt. Cram's first report with accompanying maps, in which Cram concludes,

1st. That the Lake of the Desert was supposed to be at the head of the Montreal River.

2nd. That somewhere there would be a known lake bearing the name "Lake of the Desert" which should be a point in the boundary.

And further made the erroneous conclusion that the boundary was described from information on a map of the Territory of Wisconsin published by authority of the Assembly of Wisconsin, drawn by L. Judson, a copy of which is attached to his report marked No. 1. That this conclusion is erroneous readily appears from the fact that on this map the Menominee and Montreal both head in Lac Vieux Desert. Had Congress used that map at the time of describing the boundary it would not have indicated any boundary. He also reports that the Montreal River does not head in a lake, but takes its rise in an extensive swamp, and from his map indicates that the head of such river would be very much out of line with delineated boundary. From the facts and conclusions as Cram reported them, it would be impossible to survey the boundary as found in the Act and he so reported.

*Exhibit 16:* Letter from Douglas Houghton to His Excellency, Hon. Wm. Woodbridge, July 22, 1840.

In this letter Houghton tells the Governor that the geography of the country is entirely different from that defined by the map used at the time of the passage of the Act. He here states that the boundary crosses itself once or perhaps twice. He states that Lac Vieux Desert is in reality the Chippewa, that the Montreal River is a very short river having its source in the mountainous district along Lake Superior, and that as a result there is no boundary between the

mouth of the Montreal River and Lake of the Desert. He also reports that this country is worthless and not known and that he doesn't think a few hundred miles of it are of any importance.

*Exhibit 17:* Letter from Gov. Woodbridge to the Michigan Legislature Jan. 12, 1841, based on the letter, Exhibit 16.

*Exhibit 18:* Joint resolution of the Michigan Senate and House of Representatives authorizing the Governor to appoint a Commission.

*Exhibit 19:* Proceedings of the U. S. Senate Feb. 15, 1841, the presentation of resolution Exhibit 18.

*Exhibit 20:* Resolutions of the General Assembly of Michigan Feb. 15, 1841, in relation to the boundary line.

*Exhibit 21:* March 3, 1841—Appropriation of the sum of \$6,000.00 for the purpose of designating and marking the boundary line to be expended under the direction of the Secretary of War, in the surveying and examination of the country between the mouths of the Menominee and Montreal rivers, and make a map of such territory and return it to Congress.

*Exhibit 22:* Jan. 24, 1842, Resolution of the Senate requiring the Secretary of War to make a report pursuant to the instructions given in Exhibit 21.

*Exhibit 23:* Cram's second report—

Attached to this report is a map drawn by Capt. Cram. This map is accurate except as to the Montreal river and the lakes at the head of it. On this map Cram does not attempt to portray any boundary line and in his report he gives such information as would have permitted Congress to definitely describe a line from Pine Lake at the head of East Branch of the Montreal River to the Brule River, either through or

south of Lake Vieux Desert as they might see fit. He still was not advised of the extent and description of the west branch of the Montreal River or of the existence and size of Island Lake at its head.

*Exhibit 24:* Record of the printing of Exhibit 23.

*Exhibit 25:* Report of the Committee on printing in favor of having report printed.

*Exhibit 26:* Legislative Assembly of Wisconsin Territory resolution asking a change in the line.

*Exhibit 27:* Dec. 14, 1842,—Record of the introduction of a Bill by Mr. Porter to amend the Michigan Statehood Act June 15, 1836.

*Exhibit 28:* Bill introduced as shown by Exhibit 27.

This bill proposed a compromise of the boundary situation and drew a line different from the one existing at present or the one described in the original act.

*Exhibit 29:* Proceedings of U. S. Senate showing the report of the Judiciary Committee on this bill, (ex. 28) and recommending its passage.

*Exhibit 30:* Passage of this bill in the U. S. Senate, Feb. 28, 1843.

This bill, however, did not pass the House.

*Exhibit 31:* Congressional Record of Introduction of a bill to amend the original Act December 13, 1843.

*Exhibit 32:* Report of Judiciary Committee reciting former report and attaching it without recommendation.

*Exhibit 33:* Proceedings of Senate showing passage of the Bill and transmission to the House of Representatives.

*Exhibit 34:* Proceedings of Congress upon this bill.

Congress and Committee of the Whole amended the entire description as given on the bill, on motion of a



Mr. McClelland the amendment making the boundary substantially as described in the Wisconsin Statehood Act and was conditional upon ratification by the State of Michigan, on or before June 1, 1848. No further proceedings were ever had upon this bill.

*Exhibit 35:* Instructions to Lucius Lyon, Surveyor General, by James H. Piper, acting Commissioner of the Land Office for the survey of the Wisconsin River.

*Exhibit 36:* Instructions from Lucius Lyon to Wm. A. Burt, for the survey of the boundary of Wisconsin.

*Exhibit 37:* Portion of the Constitution of the State of Wisconsin, framed in Convention of 1848, consenting to the boundary as laid down in the Statehood Act.

*Exhibit 38:* Proceedings of the Constitutional Convention of the State of Michigan in 1850, amending the boundary to conform with the Wisconsin Act. This Constitution was not adopted by Michigan.

*Exhibit 39:* Letter from Billingshurst to Draper, conveying letter from Mr. Preston in reference to the suggestion of the Michigan boundary line being made by Mr. Preston in 1834.

*Exhibit 40:* Letter from Henry Schoolcraft to Lucius Lyon Feb. 20, 1836, suggesting several acceptable boundaries and by analogy giving information that Lac Vieux Desert was not at the head of the Menominee River nor at the head of the Montreal.

*Exhibit 41:* Pages of Niles Weekly Register containing letter of Henry R. Schoolcraft 1836, indicating that Michigan had been granted the mineral district of Lake Superior. He speaks of the tremendous Pine heights between the Wisconsin, Ontonagon, Montreal and St. Mary's Rivers.

*Exhibit 42:* Photographic copy from Schoolcraft's Memoirs October 27, 1836, showing that he attended the Judiciary Committee of the Senate in the spring of the year for the purpose of imparting information which he was supposed to possess on the geography of the country in the Lake Superior region.

*Exhibit 43:* Map of Wisconsin, published by Augustus Mitchell 1846, showing the surveyed portions and the lakes.

*Exhibit 44:* Sketch of Public Surveys in Wisconsin, claimed to have been made about 1840.

On this sketch actual conditions as to Lac Vieux Desert, Menominee, and Brule rivers are shown, and the Montreal river is shown somewhat as erroneously reported in Cram's first report.

*Exhibit 45:* Same as 44 except as of 1842.

*Exhibit 46:* De Silver Map of Michigan, 1846.

Accurate as to Pottowatomie, now Washington Island, Detroit and Plum. Inaccurate as to Rock Island, but fairly accurate as to Beaver, Fox and Manitou. The steamboat map shows Detroit to Fort Howard stopping at Mackinac, Great Beaver, Isle Brule (not shown on the map), Chambers Island, Green Island, and Fort Howard. The insert map shows a group of lakes called Lakes of the Desert with the boundary line running up to the headwaters of Menominee and down the Menominee.

*Exhibit 47:* Photostat copy of special report of Douglas Houghton, State Geologist of Michigan, to Gov. Wm. Woodbridge in 1840.

This is at the same time as the letter (Exhibit 16). Beginning on page 8 Houghton says that so far as he can learn his impressions are that the boundary is an

impracticable one, stating that he will lay the facts connected with this in a separate communication as soon as possible. The separate communication has never been found.

*Exhibit 48:* Annual report of Douglas Houghton, State Geologist, February 1, 1841.

In this report Houghton refers to the fact that a small portion of the cape at Pigeon River would be in Michigan, but makes no mention of any further investigation of the boundary now in dispute.

*Exhibit 49:* Letter from John Farmer to Hon. Lucius Lyon, Delegate in Congress, January 25, 1834, enclosing a copy of Farmer's map of 1830, (plaintiff's Exhibit 5.)

*Exhibit 50:* Letter from Lucius Lyon to Col. D. Goodwin, Detroit.

Indicating that the boundary line was to depend upon the Montreal and Menominee rivers between Green Bay and Lake Superior.

*Exhibit 51:* Letter from Lucius Lyon to Amos Kendall,

Asking remission of postage charged him on maps sent for the use of the House of Representatives, by his publisher at New York. In this letter he says that he ordered the publisher to send ten maps of the Territory and ten of the State of Michigan, undoubtedly referring to the maps of the Territory of Wisconsin (plaintiff's Exhibit 6) and the maps of the State of Michigan, (plaintiff's Exhibit 5).

*Exhibit 52:* Letter from Lucius Lyon to W. L. Newberry, Chicago, Feb. 21, 1836.

Stating that Wisconsin will be created a territory with boundaries including all the present territory of

Michigan west of Lake Michigan and Green Bay and south and southwest of a line running up the Menominee River of Green Bay and through Old Desert Lake down Montreal to Lake Superior, thence northwesterly to the national boundary.

*Exhibit 53:* Letter of Lucius Lyon to Lt. Gov. Edward Munday, Feb. 26, 1836.

Stating that the report of the Committee on the Judiciary of the House of Representatives, on the boundary would be adverse on the southern boundary and that our admission would be conditional upon the assent of the legislature to the boundary claimed by Ohio and Indiana.

*Exhibit 54:* Letter from Lucius Lyon to John S. Barry, of Detroit, March 20, 1836.

Stating that a select committee of the Senate will meet to consider Michigan's affairs the next day and report a bill similar to the reported by Mr. Thomas in the House of Representatives and that within a month the Michigan Legislature or people would be called upon to act upon the proposition submitted by Congress and that Michigan would be compelled to accept the boundary claimed by Ohio and Indiana.

*Exhibit 55:* Letter from Lucius Lyon to Thomas Sheldon, April 3, 1836.

Stating that the bill for the admission of Michigan has passed the Senate and is expected to be taken up in the House and passed in a week or two, stating the conditional of admission and that upon the assent of the convention of delegates the President shall proclaim Michigan a State.

*Exhibit 56:* Proceedings of the Michigan Constitutional Convention 1867.

Showing the lack of knowledge of delegates as to the true geography of the country now in dispute, and their refusal to act in such manner as might prejudice the rights of Michigan.

*Exhibit 57:* Extracts from a history of Brown County, by Deborah N. Martin, published in 1913.

Recognizes Death's Door as an entrance to Green Bay; states that Brown County was the only county of importance in Wisconsin before 1840, and calls Green Bay the gateway from the valley of the St. Lawrence to the Mississippi; speaks of the control and operation of the lead mines in southern Wisconsin by Green Bay men; gives first mention of Green Bay as in 1669 when Allouez made the acquaintance of the Pottawatomies who dwelt at the foot of the Bay Des Puans and who had also taken possession of Huron or Washington Island; mentions the establishment of a fort at Green Bay through the influence of John Jacob Astor, whose principal agent in this territory was Ramsay Crooks; the fort was actually established first in 1816. It was occupied by portions of the garrison from Mackinac who proceeded there in a fleet of three schooners. The article says the commanders of one schooner were forced to put into a sheltered harbor of a well wooded island at the foot of the entrance of the bay and not knowing they were on the Pottawatomie Island, they christened the Island "Washington" in commemoration of their flagship and the father of their country. This harbor was undoubtedly Detroit Harbor, consequently these ships undoubtedly proceeded through Port du Mort. It further states that as the fleet went

up the bay they saw another island and to this they gave the name of the new commandant of the post Col. Talbot Chambers. The fleet arrived at Fox River either the 7th or 8th of August. At this time the settlement of Green Bay contained forty-five or forty-eight families all openly professing to be subjects of Great Britain, and was ruled by from ten to twelve traders, who were all in league with the American Fur Company, including Grignon, Laws and Porlier. Times had become more prosperous, and the want caused by war was being rapidly replaced by plenty.

In the summer of 1821 the first steamboat "Walk-in-the-Water" bearing Col. Pinckney, several officers and two companies of his regiment arrived at Green Bay to assume command of the military post. It will be remembered that the first steamer was referred to in the testimony of the Cotas. The article quotes from a narrative of this expedition:

"In the midst of our gratification and delight which the scenery on the borders of Green Bay afforded us, on the 3rd of August, we finally entered into the Fox river and at one o'clock landed opposite Fort Howard."

From this it is perfectly apparent that this boat followed the east coast of Green Bay since there is no scenery on the low line of the west coast, and in 1834 the surrounding Brown County was surveyed and opened up a settlement, the town lots reaching in value as high as \$1,200.00. During 1835 and 1836 heavy steamers brought settlers and spectators, the sales of real estate in one day reaching the sum of \$75,000.00. In Brown County as early as 1824 sentiment for the creation of a separate state west of the Lake Michigan had aroused, and boundaries proposed to include the

entire Upper Peninsula of Michigan. The names "Chippewa", "Wisconsin", and "Huron" were all suggested for the new states. At this period the lead mines were rapidly being developed and the ore being carried down the Fox and re-shipped at Green Bay for Chicago and other points. In 1824 Judge Doty's estimate of the amount of ore shipped from Green Bay was ten million pounds. Men from Green Bay were represented at the meetings of the Michigan territorial convention which was trying to effect the entrance of Michigan as a state, and it was thus arranged that a Territorial Legislative Council should be held at Green Bay in the early part of 1836, and the Seventh Legislative Council of Michigan Territory met Jan. 1, 1836. The article entreats of this as the First Legislative Council of the Territory of Wisconsin, although it was called by and held as the Territory of Michigan. The article mentions the incorporation of a Bank west of Lake Michigan to be called the Bank of Wisconsin. This bank was opened at Green Bay in 1835. On page 15 (187 of the Volume) mention is made of the first cargo of lumber shipped from Green Bay in 1834, by one Judge Arndt; the establishment of a school in December 1836; starting of the first newspaper in 1838. The articles say the schooner was the mode of transportation for lumber, and means that as many as five sailing vessels might be seen on the Fox River on a morning waiting for a favorable wind to take them to Chicago or Milwaukee.

*Exhibit 58:* Extracts from Western Tourists and Emmigrants' Guide, by J. H. Colton, 1840, Detroit Public Library.

Describes the territory of Wisconsin as being south

and west of the Montreal and Menominee River and Lake Vieux Desert.

*Exhibit 59:* Guide Through Ohio, Indiana, Michigan, Illinois, Missouri, Wisconsin, And Iowa, published in 1840.

This map shows a small lake at the head of the Montreal River called Lake of the Desert, with a direct line running from there to the head of the Menominee River through the group of lakes shown on other maps as the boundary line. The map of this territory is very similar to Plaintiff Exhibit 6 and the boundary line was evidently taken from the line as drawn on the map. This map also shows the survey of the west coast of Lake Michigan and the east shore of Green Bay as far as and including the Port du Mort passage.

*Exhibit 60:* Extracts from "Western Portrature and Emmigrants' Guide" by J. H. Colton, 1852,

Speaks of the Menominee River and the inaccuracies on maps of the country, and mentions that some difficulties have resulted in relation to the boundary between Michigan and Wisconsin because thereof, and that these difficulties would require the action of Congress to adjust. Speaks of Lake "Katekittekon" or Lac Vieux Desert as being at the head of the Wisconsin River and not at the head of the Montreal as at first supposed. That on an island in this lake there is an old Indian planting ground and says Lake of the Desert as it is sometimes translated is an improper name, the country being one of great fertility abounds in small lakes which constitute the heads of several larger rivers the Menominee of Lake Michigan, the Ontonagon and Montreal of Lake Superior, the Wiscon-



sin and Chippewa of the Mississippi, all take their rise on the summit in the Katakittakon country.

*Exhibit 16:* Extracts from Biography of George Henry Cannon,

Showing that he first came to Michigan in 1846 and was occupied in surveying public lands in Michigan from 1850 on.

*Exhibit 62:* Extracts from an article by George H. Cannon in 1905, called "Our Western Boundary."

This article shows that Cannon adopted the theory that the boundary should run up the Montreal river to its source in the Island Lake, from the other extremity of which a river was supposed to issue flowing into the Menominee of Green Bay, shows that Cannon was not familiar with the actual definition of the boundary, and that he had no knowledge that these lakes were called Lakes of the Desert, but assumed that Lac Vieux Desert was Lake of the Desert. Cannon criticizes Cram's selection of the junction of the Pine and Balsam as the headwaters of the east branch of the Montreal and says he should have gone to the lake at its head and says that he believes Capt. Cram never personally saw Pine Lake, which Capt. Cram referred to as a small pond but Cannon says is over two miles long and a half a mile wide. Cannon says the west branch is very much the larger of the two branches of the Montreal and should be deemed in fact to be the Montreal River proper, that its source is in a much larger lake which he says is unquestionably the headwaters proper of the Montreal River. He also mentions that Capt. Cram did not attempt to lay out a boundary, but merely to furnish information for future legislation.

*Exhibit 63:* Further extracts from same article.

Mentions Burt's survey; how Burt was instructed to survey the boundary line according to Wisconsin Act.

*Exhibit 64:* Extracts from an article by George H. Cannon, entitled "Michigan's Land Boundary."

Shows how the survey under the order of 1841 was suspended and tells of the interest of Peter White in the subject and the legislative action of 1909, which was the original official instigation of this suit.

*Exhibit 65:* Memorandum found with the Peter White papers in the Detroit Public Library.

This memorandum says "now it is known that the Montreal River is several miles to the west issuing out of a large lake," and "says that it occurs to me that if the boundary matter is pushed to a conclusion that the U. S. Supreme Court would have to decide whether the headwaters of the Montreal River were where nature made them or at the junction of two streams selected by Capt. Cram." The memorandum is signed George H. Cannon, and dated Washington, Michigan, September 1906.

*Exhibit 66:* Another letter dated Washington, Mich., addressed to Hon. Peter White, dated Nov. 26, 1906.

In answer to a letter of the 7th asking if it would be worth the effort to endeavor to get the Wisconsin Legislative authority to occupy the region south and west of the boundary line, to which he answers emphatically yes. He states the error made by Capt. Cram is so obvious and Michigan's title to the region so clear, that he is inclined to believe that Wisconsin authorities would give Michigan what was justly hers.

*Exhibit 67:* Letter from George H. Cannon to Hon. Peter White found in Detroit Public Library.

In answer to a letter suggesting a joint resolution calling upon Congress to correct the boundary line error made by Capt. Cram. This correspondence deals with the mistake as to the east and west branches of the Montreal and at no time recognizes that either Island Lake or Pine Lake was the lake referred to by Congress as the Lake of the Desert. In this letter he states that Cram undoubtedly was a competent surveyor and knew all about the survey of these rivers and the sounding harbors, but that he was not a woodsman and having encountered the vast wilderness of northern Michigan and Wisconsin, he was lost except he remained upon his line of survey and hence a lack of thorough exploration of the region he traversed.

*Exhibit 68:* Letter from R. G. Thwaites to Hon. Peter White, Washington, D. C., dated March 4, 1907.

In relation to the continuance of the session of the Wisconsin Legislature—original in the Detroit Public Library.

*Exhibit 69:* Letter from George H. Cannon to Peter White, Washington, Michigan dated March 5, 1907.

Dealing further with the boundary discussions, a postscript says that some 25 years before this date he spent a season examining the lands in the region of the Montreal River and its east branch and became confident that an error had been made, but he hadn't made further investigation until within a year or so when ill health gave him leisure.

*Exhibit 70:* Letter from Geo. H. Cannon to Peter White, March 11, 1907.

In which he says Cram fixed the terminal points for the boundary, one in Lake Desert and one *what he called* Montreal River, but which point was not on that river at all, but on the east branch. He goes on to say that Burt had to mark the boundary where Cram said it was because everybody supposed Cram was right.

*Exhibit 71:* Letter from Gov. Fred L. Warner to Hon. Peter White, dated March 21, 1907.

Transmitting concurrent resolutions of the House of Rep. and Senate of Michigan and certificate of appointment as the representative of the State of Michigan to present the resolution to the Legislature of Wisconsin.

*Exhibit 72:* Letter from Peter White to Hon. James C. Davidson, Gov. of Wisconsin, May 22, 1907.

Enclosing certificate of appointment referred to in the last exhibit.

*Exhibit 73:* Letter from John E. Bird, Atty. Gen., to Hon. Peter White, dated September 4, 1907.

Acknowledging receipt of a map of the boundary line and stating that he intends to visit Washington within the next few weeks to gather all information he can on the question, together with Prof. Davis who expects to soon return.

*Exhibit 74:* Photostat copy of a record in the War Department of proceedings had therein in 1904, upon the request of Hon. Russell A. Alger for facts inquired about by Geo. H. Cannon.

Shows that the War Department informed Mr. Alger that no letter of instructions from the Secretary

of War directing Capt. Cram to survey the Michigan-Wisconsin boundary was found on file, but that letters of instruction from Chief of the Topographical Engineers to Capt. Cram, dated July 30, 1840 and Mar. 31, 1841 were found on record and copies submitted. That the Act of Congress June 12, 1838 appropriated \$3,000.00, Act of Mar. 3, 1841, \$6,000.00, Act of May 18, 1842 \$7,000.00, Act of August 10, 1846 \$1,000.00, for the purpose. The report indicates that only \$7,613.97 were expended by Capt. Cram and that the balance of the appropriations of 1841 and all the appropriations of 1842 were applied to make a survey of Green Bay and that it is thought that the appropriations of 1846 furnished the funds for the survey by Mr. Burt. The report concludes that Capt. Cram reported the line impossible of definition. That Congress further defined it in the Act of August 6, 1846 creating the State of Wisconsin. This also encloses a letter of instructions to Capt. Cram, Mar. 31, 1841, instructing him to make a correct delineation of the country between the headwaters of the Menominee and Montreal Rivers, for the information of Congress.

*Exhibit 75:* Extracts from "Stories of the Badger State" by Reuben Gold Thwaites.

Stating that the northern peninsula was given to Michigan as a recompense for the loss of Toledo and Maumee Bay. He also states that the difficulty with the Michigan-Wisconsin boundary occurred because of the fact that the country had not been thoroughly surveyed and there was no good map, and the attitude that a line must pass through Lac Vieux Desert, stating that the mistake was made because of a map, published in 1834 which showed the headwaters of the

Menominee and Montreal in Lake Vieux Desert, the view taken by Capt. Cram in his report. He states that the running of a line through the woods between the far distant headwaters of the Montreal and Menominee so as to have the lake in the way resulted in a crooked boundary, but it was at this time too late to correct the boundary and it thus now remains.

*Exhibit 76:* Extracts from an article on "the Boundary of Wisconsin" by Thwaites, from the Wisconsin Historical Collections.

States that on a map drawn by James Doty in 1820 to accompany a report on northern Wisconsin to Gov. Louis Cass, Lake Vieux Desert is styled "Old Plantation Lake". Discusses several possible boundaries and assumes that Cram was right in saying that Lake Vieux Desert was the lake referred to by Congress quoting from the report of the Committee of the Wisconsin Territorial Council, he states "It is not in the nature of political communities to surrender to any rights, especially rights of territory, to which any circumstances have given them the color of claim, and it is not reasonable to expect that Michigan will surrender to us any claim she may have to territory west of Lake Michigan derived by virtue of the act admitting her to the Union". This after stating that the northeast boundary of the territory of Wisconsin was still open and *should not be* established as the permanent boundary between the two states. Speaking further of the act of Congress of Aug. 6, 1846, enabling the people of Wisconsin to form a state Constitution, he says "while it embodies some of the recommendations made by Capt. Cram, it is nevertheless faulty and fails in several particulars to specify which channels of the

Menominee, Brule, and Montreal Rivers are the intended ones."

*Exhibit 77:* Extracts from "Child's Recollections" from Wisconsin Historical Collections.

Showing that Capt. Cram procured the men who assisted him in his survey at Green Bay and that the author was employed to take charge of the packages and provisions on the expedition of 1841; the hardships which the party suffered and the difficulty they had because of iron deposits.

*Exhibit 78:* Letter to John E. Bird from E. R. Hall, Batavia, New York.

Wherein Hall tells of his being in the survey of 1846 and 1847 under William A. Burt. He states, "On finding the supposed boundary line we were several days locating different points to establish our starting points. The worst was in finding Lake Brule on coming back to Lake Desert. Mr. Burt says he was satisfied that Capt. Cram worked under a mistake in the establishment of the boundary line which should be far southwest of where he found it. He said Capt. Cram evidently mistook the rivers or he never saw them. Burt finally set a cedar post at the terminus of Cram's line and started the work which was very laborious, but they were always ready whenever they could get a shadow from the sun, referring to the Burt solar compass from which he made an accurate line.

*Exhibit 79:* Extracts from an article on "Boundaries of Michigan" by Claude S. Larzelier, from Michigan Pioneer & Historical Collections.

Speaks of the transfer to Congress by the President, a report showing that the line could not be run and

suggested that Congress make a more definite description.

*Exhibit 80:* Extracts from "The Western Boundary" by Anna Mae Soule, Michigan Pioneer & Historical Collections.

Tells how Mr. Preston of South Carolina was chairman of the House Committee and that during a discussion he asked how much territory lay west of the proposed State of Michigan and on being told he suggested that such a division of the country left too much territory west of Lake Michigan to form one state, and that it would be much better to give Ohio what she wanted on the south and extend Michigan on the west by running a boundary through Lake Michigan to Green Bay and thence northwest to Lake Superior, by a devious but supposed waterway.

That the appropriation for the survey was made at the suggestion of Senator Norvell, in 1838, but was too small. The article proceeds further on the assumption that Congress had thought they defined an entire water boundary, and that Captain Cram rightly reported that the boundary was impossible. This article also contained copies of the two maps attached to Cram's report, the Judson map showing Montreal headway in Lake Vieux Desert, and the other showing the Montreal with no lake at its head.

*Exhibit 81:* Unassigned.

*Exhibit 82:* Extracts form Michigan Constitutional Convention 1907.

Showing that the Constitutional Convention knew of no dispute as to the boundary except as to the east and west branch of the Montreal and claim any and all rights they might have. At that time the boundary



was made to run up the west branch of the Montreal as the main channel and to the middle of Island Lake deeming it the headwaters of the Montreal, and without any idea that it was the lake designated by Congress as the Lake of the Desert, and the Constitutional Convention still deemed Lake Vieux Desert, a necessary point in the boundary due to Cram's error.

*Exhibit 83:* Extract from "Personal Memoirs of Henry R. Schoolcraft, showing travels in Green Bay in 1820.

Tells of their travelling from Green Bay up the east shore of the Bay and of their camping at Little Detroit, and Port des Mort passage.

*Exhibit 84:* Map of the Territory of Michigan by John Farmer in 1830.

It is noticeable that this map contains inserts of Mackinac and of the lead district now the territory of Wisconsin, of Green Bay settlement and the portions of the state which had been surveyed only.

*Exhibit 85:* Traveller's Map of Michigan, deposited by H. S. Tanner in the Library of Congress, as the author, in 1832.

Contains steamboat route Detroit to Fort Howard, stopping at Great Beaver Island, Isle Brule and Fort Howard. On this map islands of the Grand Traverse are very inaccurate and an island very near the northern end is named Isle Brule.

*Exhibit 86:* Map of the Territories of Michigan And Wisconsin by John Farmer in 1835.

On this map the survey of the west coast of Lake Michigan and the east coast of Green Bay is shown. The map is accurate as to Washington, Detroit and Plum Island. Shows Detroit Harbor, Eagle Harbor,

Chambers Island, Green Island, Big and Little Sturgeon Bay. The islands to the north of Washington Island are very inaccurately portrayed and one of them is named Isle Brule, this island being placed where no island in fact exists.

*Exhibit 87:* Map of the surveyed part of Michigan by John Farmer 1837.

This map is similar in all respects to preceding exhibit, both of which are entirely inaccurate as to Menominee river and Lake Vieux Desert.

*Exhibit 88:* Letter from A. J. Ellis to Hon. Lucius Lyon, Dec. 8, 1833.

Urges Lyon to ask for improvements of the Fox and Wisconsin rivers, asking specifically for \$500.00 for the purpose of setting buoys across the flats at the mouth of the Fox stating this is necessary improvement because more than half of the schooners have grounded on the flats this season.

*Exhibit 89:* Letter from A. J. Ellis, Green Bay, to Hon. Lucius Lyon, Washington, entering a protest on the change in the mail route to Chicago.

*Exhibit 90:* Petition enclosed in the last letter

Showing the improvements in this settlement as of that date June 22, 1834.

*Exhibit 91:* Letter from Lucius Lyon to Hon. J. D. Doty, Gren Bay, Feb. 10, 1836.

Stating the progress of the bill creating the territory of Wisconsin.

*Exhibit 92:* Letter to Lucius Lyon from A. J. Ellis, Green Bay, February 15, 1836.

Showing the situation as to entrance of Michigan

battled by the statesmen from Ohio and the interest of Mr. Ellis at Green Bay in Michigan's rights.

*Exhibit 93:* Unassigned.

*Exhibit 94:* Report of Capt. W. G. Williams, Dec. 31, 1841.

Report shows the survey was commenced at the southern cape of the entrance to Green Bay, the object of commencing north of Green Bay consisting not only of the importance of the entrance itself, but in order that this point might be established by a triangulation of Beaver and the Manitou Islands, the great thoroughfare of the straits of Mackinac was likewise important and surveyed. The report mentions the importance of surveys on the boundaries between the states, but does not show that any attempt was made as to this boundary. In making this survey the base line ran from a point about seven miles south of the northern extremity of the peninsula through the entrance of Green Bay to the north pier of the harbor of Chicago. From this base line the west coast of Lake Michigan and the east coast of Green Bay was plotted and soundings along shore were taken. It will thus be seen that this survey was conducted for the purpose of furnishing information necessary to navigate on the Beaver and Manitou Islands and Port de Mort passage and from Chicago to the Port de Mort passage and down the east coast of Green Bay to the village of Green Bay. The report contains an account of the commerce of Lake Michigan, its dangers, disasters and states that in 1679 La Salle built a vessel of sixty tons and sailed it from Lake Erie to Green Bay then to Niagara, and after waiting some months upon the failure of the vessel to return to Green Bay he proceeded

westward. From that time to the commencement of hostilities in the War of 1812, sailing vessels were seldom on Lake Michigan except bark canoes and occasionally a Mackinac boat coasted along the beach. In 1819 the only steamboat then on Lake Erie "Walk-in-the-Water" ventured a trip to Mackinac and subsequently in 1826 to Green Bay, upon an experimental excursion to Green Bay. The report states that commerce of the Upper Lakes commenced in 1832 when Chicago began to grow. That the necessity of the Black Hawk's Indian War required transportation of troops and supplies concentrated at Chicago. At the close of the war that fall immigration followed and Green Bay began to grow. Then follows a detailed report of the receipts of a number of boats, lives lost and damages on Lake Michigan for various succeeding years, and speaking of the dangers the report states, "There is an entire absence of any improvement at the mouths of such rivers as nature has furnished for refuge. Along the whole western coast of the lake except at Chicago. Commencing at Death's Door the entrance to Green Bay and going around the lake to a point nearly opposite on the east side we passed over five miles of country. It reports the making of hydrographic surveys of the bays at several mouths of the river with the plan and estimate of the coast to make them suitable harbors. It states the natural route of the lead and copper trade of Wisconsin as through the Lake and that this trade has arrived to that degree of importance to require for itself alone a safe harbor for shipment. That the most natural route from the heart of the lead district is into the head of Green Bay. It is noticeable that this report is signed T. J.

Cram, Capt. of the Topographical Engineers, dated at Racine, Wisconsin Territory, March 1, 1842, and does not in any way attempt to fix a boundary between the State of Michigan and the Territory of Wisconsin through Green Bay, and did not include a survey of that portion of the country between Green Bay and Lake Michigan to the north of Washington Island nor any survey of Green Bay to the west of Chambers Island. If it may be said to reflect, Captain Cram's idea of the most usual ship channel and it is shown by a report of the War Department that he was spending money appropriated for the purpose of determining that fact, certainly he had no notion of placing the channel where it now exists.

*Exhibit 95:* Extracts from "Travels Through the Interior Parts of North America by J. Carver in 1767.

Describing a trip to Green Bay in 1766, states that at the entrance from Lake Michigan to Green Bay are a string of islands. That of the side that lies to the southeast is the nearest and best navigation and that of the largest and best of these islands is a town of Ottawas. The report further discusses the land on the southeast side of Green Bay indicating that they had passed along to that shore. It further states that the communication between Lake Michigan and Green Bay had been reported by some to be impracticable for the passage of any vessels larger than canoes on account of the shoals that lie between the islands in the Grand Traverse, but on sounding it he found it of sufficient depth for a vessel of sixty tons and the breadth proportionable. The passage on the south-

east side of the string of islands is Port de Mort Passage.

*Exhibit 96:* Plan of Capt. Carver's travels through the interior parts of North America, 1766 and 1767.

This map is fairly accurate as to the Beaver Island. The southern end of the entrance to Green Bay or Port de Mort is accurately portrayed, as is Chambers Island and Hat Island, indicating that he travelled from Mackinac passed the Beaver through Port de Mort and the Strawberry passage to Green Bay. The Menominee river is shown as heading in a lake without name and there is no river shown as the Montreal.

*Exhibit 97:* Map of the U. S. Geo. Survey of the southern entrance of Green Bay, 1842.

On this map, Detroit, Plum, Washington, Fish and Bear Islands are fixed by triangulation. The Fish Island upon this map is the Pilot Island of today, and triangulation furnish the necessary data for passage through the Door, which upon this map is called Albert Passage. The location of Fishermen's Shoal of today is very inaccurate and practically not attempted to be given as an island, but merely splash put on the map to indicate there are dangers at this entrance. It is also interesting to note that upon the Green Bay side, the islands are given with almost exact accuracy as are also the harbors. This exhibit is a photostat copy of the original sketch of this survey, now in the Detroit Lake Survey Office.

*Exhibit 98:* Extracts from the report of the survey of Green Bay made March 26, 1846, being Document 170 of the 29th Congress. 1st Session, H. R.

This transmits to Congress a copy of the chart of Green Bay in Wisconsin Territory.

*Exhibit 99:* Chart of the southern entrance of Green Bay by Capt. Cram transmitted to Congress, as indicated in Exhibit 98.

*Exhibit 99:* Part 2. Same on a larger scale, dated 1863.

Chart on the entrance of the north end of Green Bay and the islands at the entrance, 1863. It is noticeable that this is the first information of the existence of any shoals on what is known as Fishermen's shoal in the entrance to the Rock Island passage, and that upon this chart these shoals are very inaccurately portrayed and are not marked.

*Exhibit 100:* Chart of the South end of Green Bay, the islands at the entrance and part of the west coast of Lake Michigan, published in 1863 and 1864.

This chart again inaccurately portrays Fishermen's Shoal and on neither this chart nor the last one are the St. Martin's Shoal in the middle of the Rock Island passage shown.

*Exhibit 101:* Survey of the west coast of Green Bay by A. F. Chaffey 1865.

*Exhibit 102:* Photograph copy of the chart of the South end of Green Bay and the islands in the entrance thereof, as per survey of 1864—revision of 1905.

In this chart for the first time appear Fishermen's Shoal and the Fish Island Shoal. St. Martin's Shoal in the center of Rock Island passage is not yet portrayed, however the Whaleback shoal which interferes with the passage to the west Chambers Island is shown, indicating that it had been discovered by boats attempting to pass to the west of Chambers Island coming to Menominee. While St. Martin's Shoal is not

shown in the sailing directions marines are instructed in taking this passage to look out for a ten foot shoal south of St. Martin's Island under given bearings. The sailing directions also instructed a course from a lake to Green Bay to follow the east coast of Green Bay or Strawberry Channel.

*Exhibit 103:* Letter from Alexander I. Irwin to Hon. Lucius Lyon, dated December 12, 1833, urging him to push a bill for the organization of the territory of Wisconsin.

The latter deals with the location of the seat of government in the proposed territory, alluding to the fact that Green Bay is the most important point of the territory, being the terminus of steamboat navigation and about equidistant between Mackinac the northern extremity and Iowa the southern extremity of the state. At this time the contemplated territory of Wisconsin included the Upper Peninsula of Michigan.

*Exhibit 104:* Extract from Volume 3 of Geology of Wisconsin, naming the Montreal river.

This article is entirely in error in relation to this stream as it speaks of the "Go-go-ga-shu-gun" and Upper Montreal and Balsam. This exhibit is offered for the purpose of showing that the knowledge of actual conditions surrounding the Montreal section is very inaccurate and the records in regard thereto very misleading.

*Exhibit 105:* Extract from the report of J. G. Norvall, Ass't Geologist, found in U. S. Senate Document 57, April 23, 1848, dealing with the Montreal river.

This article, dealing with the west branch of the Montreal, calls it first the west fork of the Montreal but later deals with it as the principal Montreal river



and gives it at 25 ft. wide and 3 ft. deep, at the point where the trail crosses it, and is 963 feet above the level of Lake Superior at that point and says that it was there bridged by engagees of the American Fur Company.

*Exhibit 106:* Act No. 15 of the Public Acts of 1919, Extra Session, creating the Michigan-Wisconsin Boundary Commission and authorizing the Attorney General to bring such action as he may deem necessary and proper to establish the boundary between Wisconsin and Michigan.

*Exhibit 107:* Copy of portions of a book entitled "Sketches of a Tour of the Lakes, etc., dated 1827, deals with a trip along the north shore of Lake Superior, commenced July 8, 1826, tells of the dangers from unfriendly Indians at that time. Among those on the trip was Henry Schoolcraft, Indian Agent, describes the mouth of the Montreal river and the finding of a starving Indian at that point and the commencing of the Portage trail to Lake Du Flambeau, which has an outlet in the Chippewa river entering into the Mississippi, the writer being interested in this route because it was reported that a band of Indians who had committed murder and who they were attempting to arrest, had taken this route.

The exhibit is offered for the purpose of showing the conditions at that time and that the knowledge of the country depended almost entirely upon the characteristics of the trails traveled by the voyagers and the knowledge of Schoolcraft, who later appeared before the Senate Committee which drafted the act.

*Exhibit 108:* Pages of the second report of the Railroad Commission of Wisconsin on Water powers, giving data as to gauging stations maintained at Gile and Ironwood, between the years of 1918 and 1923.

Summaries from this data will be found in the testimony of T. R. Hasley.

*Exhibit 109:* Photostat copy of record of Lighthouse from U. S. Lake Survey Office, Detroit.

### SYNOPSIS BY DATES

Name or Position	Fog Signal	Date	Remarks
Potawatomie, NW. Point Rock Island	No	1837	9 ft. shoal in channel 2 dangerous reefs to SE.
Tail Point Entrance to Green Bay . . .	Yes	1848	
Porte des Morte, Pilot Island . . . . .	Yes	1850	No shoals in channel.
(Pilot Island) . . . . .			
Green Island, Green Island . . . . .	No	1863	Best channel is to E. of this island.
Eagle Bluff, Mainland . . . . .	No	1868	Guide to Strawberry passage. Good harbor. Reef to NE.
Chambers Island, Chambers Island . .	No	1868	
Menominee, Menominee Pier . . . . .	Yes	1877	
Fisherman's Shoal, near Can Buoy . .	No	1897	Bearings given to Port des Mort Passage or Poverty Island, none to Rock Island.
Entrance to Rock . . . . .			Range for Porte des Morte.
Island Passage . . . . .			
Plum Island, Plum Island . . . . .	No	1897	
Range Lights . . . . .			
St. Martin's, St. Martin's . . . . .	Yes	1905	
Light, Island			

No record of the old lighthouse on Plum Island. See exhibits 126-180—test of Capt. Betts, Peterson, Richter.

*Exhibit 110-111:* Blue prints of Menominee and Brule made by Capt. Cram on his first survey.

These exhibits are offered to show that Cram made no effort to determine the main channel of the river.

*Exhibit 112:* Blue print copy of the Montreal River Survey under the direction of Capt. Cram in 1841, Cram's second trip.

This exhibit is offered to show that Cram caused to be surveyed only the lower section and east branch of the Montreal river, and that the map is inaccurate except as to those portions of the river and the portion along the Portage trail there shown.

*Exhibit 113:* Is a complete map of Northern Wisconsin and Upper Peninsula of Michigan with lines illustrating the territory in dispute, being the same as Exhibit E of the Bill of Complaint.

*Exhibit 114:* Government chart of the entrance to Green Bay, 1922, covering the entrance to Green Bay.

This chart is offered for the purpose of showing the actual physical condition of all entrances. The chart refers to four principal entrances, to-wit, Port de Mort passage, Rock Island passage, St. Martin's Island passage and Poverty Island passage. The widest passage as far as obstructions in the passage itself are concerned, is the Poverty Island passage, this passage however being endangered by Poverty Island Shoals and Gravely Island Shoals within Green Bay. St. Martin's Island passage is very crooked. Rock Island passage is traveled on a tangent, this being made simple by a known course from a point found by bearing on three light houses. The Port de Mort passage is now made very simple by bearing on the range lights. The outer edge of Fisherman's Shoals is also marked at the present time by a can buoy so that at the present time choice of these channels would depend entirely on which of them were shorter route to the desired destination. Particular attention is called to the fact that from the location of Pottowatomie light it clearly appears that this light would not be serviceable to any vessel approaching Rock Island passage from any direction south of due east.

*Exhibit 115:* 1922 chart of the West Coast of Lake Michigan and South end of Green Bay, showing Strawberry Passage.

*Exhibit 116:* 1922 chart of North End of Green Bay and North Coast of Lake Michigan to Suel Choix.

*Exhibit 117:* Certain pages from a folder of the Goodrich Steamship line of 1924, showing present route of travel in Green Bay and that these ships enter Green Bay by the Sturgeon Bay Canal, recross to the Strawberry passage and Washington Harbor, running thence to Escanaba and leaving the Bay through St. Martin's Island Passage.

*Exhibit 118:* Extracts from "Sailing Directions for Lake Michigan, Green Bay and Strait of Mackinac," Publication No. 108b dated 1906, U. S. Lake Survey Office, shows that the original canal at Sturgeon Bay was built in 1893.

Deals with the entrance to Green Bay as an entirety describing the safe passage. The balance of the article deals with the difficulties of navigation in the several passages and gives courses and distances for various destinations. Attention is particularly called to page 9 where the article says "having entered Green Bay by any of the passages previously described, we will return to the coast at the Port de Mort's entrance and proceed down the eastern channel of the Bay," as indicating that this was the most usual route to travel, Port de Mort's passage and the Strawberry Channel.

*Exhibit 119:* Extracts from "Scotts New Coast Pilot, 1886, found in the Library at Sault Ste. Marie, giving instructions for entering Green Bay by Portes de Mort before establishing of the range lights.

It is apparent that Port de Mort passage is made on a direct course northwest by north from a point two miles southeast of Pilot Island light with no warnings.

*Exhibit 120:* Copy of a letter found in the Department of Interior in relation to the establishment of Pottowatomie light on Rock Island, showing that the reservation of this light was made June 8, 1840, although the light was established in 1837.

*Exhibit 121:* Map of Pottowatomie (now called Washington Island, showing the peninsula between Washington Island and Sturgeon Bay.

This is a photostat copy of the original received by office of the Milwaukee Lighthouse Service, June 9, 1837. The NW end of this island is known as Boyer's Bluff and is the point upon which it is claimed Pottowatomie Light was supposed to have been established.

*Exhibit 122:* Extracts from Modern Lighthouse Service, showing the location of lighthouse was under the supervision of the General Superintendent of Lights who executed the orders of Congress, but who had certain discretionary powers.

That Congress usually fixed the location and kind of light. The Collector of Customs nearest to the location was usually made the local superintendent and selected the exact sight. That there were many complaints in regard to this system and on May 10, 1838, a report of the Committee of Congress, states that Congress has been acting upon the loose information given by petitioners who were usually interested in the success of certain harbors where they had lands and which had no connection with the general public interest.

*Exhibit 123:* Extracts from Discovery of a Vast Country in America, by Father Louis Hennepin, in 1698, describing a trip from Mackinac to Lake of Illinois (now Michigan) arriving at an island at the mouth of the Bay of Puans (Green Bay) inhabited by Indians called Pottowatomies.

He speaks of their ship riding in a protected anchorage notwithstanding the violent storm (from the geography of the country undoubtedly Detroit Harbor). Editors note in this article says Pottowatomie Island now Washington Island.

*Exhibit 124:* Extracts from history of the Great Lakes, Published in 1899, original in the Public Library at Sault Ste. Marie, gives the derivation of the name Montreal river, Montreal being Indian for River of the White Falls, and in the instance of our Montreal river referred to the falls near the mouth of the Montreal river, stating that this river was named by voyagers in memory of their home. •

That the Griffin, a vessel built by La Salle arrived at the head of Lake Ontario in 1679. On September 12, she sailed out of the straits into Lake Michigan and after a prosperous run arrived at Washington Island, situated at the entrance of Le Grande Baie, now Green Bay, where she found secure shelter in a small bay now known as Detroit Harbor, at which point they rode out a violent storm of four days' duration. This last description is given under the sub-heading "Arrives at Green Bay." Other articles tell of the arrival of the Griffin at Fort Howard, the city of Green Bay, on the same trip. The article, deals generally with the growth of traffic on the lakes and beginning on page 4 the first steamboat sailed on Lake Michigan in 1826 or 1827. She made an excursion with a pleasure party to Green Bay. These excursions were annually made by two or three boats until 1832, but in 1833—there were eleven steamboats upon the lakes and they made in all two trips to the Upper Lakes, two to Chicago, and one to Green Bay. In 1834, two trips to Green Bay, three to Chicago. That business increased in 1835 and 1836, and in 1839 a regular line of eight boats was running to points west of Detroit. In 1841 the Chicago and Green Bay boats earned the sum of \$301,803.00 from the increased quantity of agricultural products brought

from the State of Michigan, and also a good many tons of lead and shot from the mines in that section.

The article, page 8, deals with the arrival at Death's Door of a party on the steamboat St. Louis, July 9, 1841. Tells the derivation of the name Death's Door. A large tribe of Indians endeavoring to escape from a hostile tribe in canoes were all drowned. States that "a single lighthouse and occasional landmark is all that they have seen indicating that our government recognized the existence of this country. Unfortunately he does not say just where this lighthouse is located. He describes a group of islands at the entrance and states that having completed the run through the islands the boat was headed for the north Manitou Island.

Page 11 of the articles states Green Bay is one of the oldest historical points on Lake Michigan, the visit by Jean Nicolet in 1639, the establishment of the Indian mission by Father Allouez in 1669, the visit by La Salle and the Griffin in 1679, and by Father Charlevoix in 1721 where he found French posts which had been built many years earlier. The first permanent settlement was in 1745 by Augustine De Langdole, an Indian trader and a detachment of British troops, and that in 1815 the U. S. Trading post was established and in 1816 Fort Howard was erected. The Walk-in-the-Water arrived with troops and passengers Aug. 5, 1821, and a line of steamboats was established soon thereafter between Detroit and Green Bay, and improvement of the Fox River commenced.

An appendix shows that the steamer Sheldon made a trip to Green Bay and Mackinac in 1830. That in 1832 steamers visited the upper lakes and more especially Green Bay and arrived decked out with evergreens.

A vessel from Detroit arrived March 14, 1834, the Commodore Lawrence of Huron, Ohio on a trip to Green Bay. In 1834 the Michigan built by O. Newberry made an excursion tour of two thousand miles, visiting Mackinac and Green Bay and other ports of Lake Michigan. In that year a steamboat association composed of eighteen boats made three trips to Chicago and two to Green Bay.

This exhibit is offered for the purpose of showing that at the time of the creation of the State of Michigan, the lake traffic was between eastern ports, Mackinac, Green Bay, and Chicago, the recognized route of traffic being to Chicago back to Green Bay by way of Port de Mort, and the Strawberry passage and from Green Bay to Mackinac by way of Strawberry Port de Mort and Manitou Island.

*Exhibit 125:* Extracts from a diary of Algonquin language from the Catholic Home Library, Sault Ste. Marie, giving the name of Lake Vieux Desert with the equivalent, Gete Ketigaming—Lake of the Old Land Clearing, showing the derivation of the name Lake Vieux Desert or Lake of the Desert.

*Exhibit 126:* Photographic views of the lighthouse ruins on Plum Island.

View a. Ruins of the stone steps on the path leading from the landing to the site of the lighthouse.

b—Photograph of birch tree growing inside the ruins of the tower, and showing a portion of the crumbled wall.

c—Portion of the walls of the ruin from the inside.

d—Photograph of three large birches growing within the ruins of the residence of the old lighthouse—the wall of the residence can be seen in the background.



*Exhibit 127:* Photographic view across the Porte des Morte passage, from the sight of the Old Plum Island Lighthouse.

Attention is called to the fact that the photograph shows breakers at a very short distance from the shore, indicating deep water up to that point. The distance to the mainland opposite is given in the testimony of Col. Martin as one and one-half miles. Pilot Island light is to the left of the range of this picture and the Waverly Shoal is directly east of the point on the headland seen in the background.

*Exhibit 128:* Extracts from History of Door County, Wisconsin, by Hjalmar R. Holand, 1917, descriptive of Door County, Wisconsin.

He gives the derivation of the name Winnebago a tribe of Indians then occupying this section, as being the "Men of the Sea," who had their principal village at Red Bank, near what is now the city of Green Bay, states that at one time hundreds of thousands of Indians occupied this peninsula, the location of their villages and cemeteries being still apparent. The greatest evidence of their settlement remaining upon Washington Island, principally at Detroit Harbor in Porte Des Morte. That this region was the battleground first between the Algonquins and the Iroquois, Ottawas, Sauks, Foxes, and Menominees were driven westward by the Iroquois, the Winnebagoes alone being successful in holding the territory. He states that the Winnebagoes were a branch of the Dakota tribe, the original occupants of this territory. This is important in connection with the tradition that Lac Vieux Desert received its name because it was the region of the farms of the Dakotas, the Sioux who were driven out by the Menominees, branch of the Ojibways, of the

Algonquins, who were in turn practically annihilated by the Chippewas branch of the Iroquois. He tells in detail of the Winnebagoes driving the Pottowatomies into Porte des Morte passage, which gave it its name, stating that a war party of Pottowatomies were betrayed by a false light into landing on the abrupt headland of the peninsula where they were wrecked by the force of the waves and tomahawked by the waiting Winnebagoes. He tells of the travels of the early fur traders and of the missionaries along the east shore of Green Bay from Green Bay to the Door, and of the large number of Indians who occupied the east shore of the Door County peninsula, who at the invitation of the French migrated to southern Michigan to form a buffer between them and the tribes under the domination of the English. leaving only a small mixed village on Detroit Island. Tells of Green Bay being first named Baie des Puons by Father Charlevoix in 1720, and of Island de Petite, Detroit, being named by the French and of Washington Island being named because of the fact that in July, 1816, a party of American troops being sent from Mackinac to Green Bay to take possession in schooners, became separated in a storm and the schooner Washington took refuge from a southerly storm in what is now known as Washington Harbor and the bluff known as Boyer's Bluff was named in honor of the Colonel in charge, later the Indian agent at Green Bay. On the same trip Chambers Island received its name in honor of Col. Chambers of the party. Then follows a detailed description of a trip along the eastern shore of Green Bay by Mrs. Henry Baird, in 1821. This shows that the party passed up the east shore, camped at Little Detroit and then went

around to Rock Island as the starting point to commence passage across the lake.

The article continues in detail with the history showing first settlers at Milwaukee in 1818, and of trips from that point to Fort Howard, increasing settlement commencing about 1835. The village of Navarino being platted in 1830, Government Land Office being opened July 30, 1835, at which the settlement of Sturgeon Bay began, with Fish Creek and other east shore settlements.

In 1847, the steamer "Michigan" began to run between Chicago and Buffalo, visiting at the points Green Bay, Fish Creek, Sturgeon Bay and Washington Island. In 1834 the Federal Government began to quarry stone at the mouth of Green Bay to build breakwaters. Speaks of the men lost in the Door in 1871 and 1872, describing several of the wrecks, and of the establishment of a Coast Guard Station in the Door, because thereof. That the Pilot Island Lighthouse is famous for having witnessed more shipwrecks than any other lighthouse on the lake. That the fog siren can be heard for forty miles. Most of the keepers of the lighthouse have received medals for bravery. Tells of the wreck of Captain Clow's schooner, Captain Clow being a witness in this case, and the saving of a crew by Martin Knudson, the keeper of the lighthouse.

Tells of the erection of the Eagle Bluff lighthouse three miles north of Fish Creek, in 1869, to mark the eastern passage to Green Bay. Tells of Whaleback Shoal, lying nearly in the direct path of the travel in Green Bay west of Chambers Island, being the cause of many disasters before being properly marked.

*Tells of the lighthouse on Rock Island being put*

*there to warn away the mariners from the dangerous coast.*

Tells how the name Pottowatomie Island was applied to the entire group Washington, Rock and Detroit, showing the name Les Poux, in French plural, and became known to the very early parties who travelled by canoe along the north shore of the Lake, then skipping from island to island from Point Detour to Death's Door Bluff.

The article then deals at length with the development of settlement on Door County peninsula. Tells of a conversation in Depere some years after the settlement of Fish Creek, in which the islands were mentioned, a stranger asked what county they were in, and a reply from Asa Thorp of Fish Creek, said, he didn't know, and on being asked what state or territory it belonged, he said, he didn't know, they didn't have any up there.

*Exhibit 129:* Copy of a map of Washington, Rock and Detroit Island, in the group referred to as Les Poux from the History of Door County.

*Exhibit 130:* Extract from "Our Inland Seas," describing the loss of the "Griffin" Mackinaw boats, and travel in early days down the lakes and Green Bay.

*Exhibit 131:* Extracts from "Waubun" telling of the arrival of one of Newberry's schooners at Green Bay.

*Exhibit 132:* Extracts from "Wisconsin in Three Centuries" by Reuben Gold Thwaites, tells of the establishing of the territory of Wisconsin.

That the northeastern boundary of the territory of Wisconsin was the result of an error in a map, and of William C. Preston of North Carolina, stating that Preston referred to a map such as the Judson map

when he suggested the boundary, thus continuing the Cram error.

*Exhibit 133:* Extracts from "Character and Influence of Indian trade in Wisconsin," fixing the periods of occupation as follows: French 1634-1763, English 1763 to 1816, American 1816 to 1834, and giving the date when the lead mining had superceded the Indian trade as of 1834.

*Exhibit 134:* Extracts from "Centennial History of Menominee County" by Eleazer S. Ingalls, tells of the establishment of a fur trading post at Menominee in 1795 by Louis Chappee.

That the next settler to arrive was Wm. Farnsworth in 1822, he commenced building a saw mill in 1832. In 1839 there were several settlers. The second mill was built in 1844. That in 1856 there were five mills operating and by 1867, fourteen mills. In the spring of 1861 arrangements were made for a railroad to run north to Menominee, and in 1863 Menominee County was organized. The railroad being completed in Menominee in 1871 and was extended to Escanaba in 1872. The first steamboat call at Menominee was in 1836, but not until 1856 or 1857 that boats could enter the harbor at which time regular trips were made by steamers from Green Bay to Menominee.

*Exhibit 135:* Extracts from History of the Northern Peninsula by Alvah L. Sawyer, showing the growth of the lumber industry and that Menominee had not become an established harbor until about 1856.

*Exhibit 136:* Extracts from the laws of Michigan and Wisconsin, relating to the size of mesh of various nets, permitted to be used in the waters of Green Bay along the line of the interstate boundary.

*Exhibit 137:* Government township plat, Town 44 No. Range 1 East, Wisconsin.

This is a plat of the land lying directly west of Island Lake at the headwaters of the west branch of the Montreal river, and showing the western portion of that lake.

*Exhibit 138:* Government plat of Township 44 North, Range 2 East, 4th Mer. Wisconsin.

This is the plat showing the remainder of Island Lake and the territory between Island Lake and Pine Lake. Upon this territory the west branch appears following nearly the center of the plat. The east branch follows along easterly passing out of the plat in Sec. 25. Lehman's Creek also appears on this, passing through Secs. 1, 12, 14 and into 23.

*Exhibit 140:* Letter of A. J. Dallas to the President of the United States, dealing with the Indian situation, recommending the establishment of an Indian agency at Green Bay June 20, 1815.

*Exhibit 141:* Letter from J. Mason of the Indian office to Mr. Irwin, found in Wisconsin Historical Collections dated July, 1815, telling of the establishment of the Indian agency at Green Bay, and a later letter dealing with goods shipped to him by way of Chicago.

*Exhibit 142:* Letter from Geo. Graham, Commanding Officer at Mackinac, to Wm. Puthuff, Indian agent, telling of the appointment of executive agents in the fur business.

*Exhibit 143:* Letter from Puthuff to Governor Cass, June 6, 1816, telling of the seizing of furs being unlawfully taken out of America by English.

*Exhibit 144:* Letter from Rocheblave to Louis Grignon at Mackinac, June 6, 1818, telling of the seizure of furs by Puthuff, Indian Agent. The letter was addressed to Louis Grignon, at Green Bay.

*Exhibit 145:* Further letter from Puthuff to Gov. Cass with complete report on the proceedings following

the seizure of these furs, and of the travel from Mackinac to Green Bay, and of the establishment of a garrison at Green Bay, the fur industry of Door County.

*Exhibit 146:* Letter from Puthuff to Gov. Cass, telling of the situation at Green Bay, Prairie du Chien, etc., and of the garrison leaving for Green Bay.

*Exhibit 147:* Further extracts from a similar letter dated Aug. 18, 1816, showing that goods had been received at Mackinac for Green Bay and Chicago at this date.

*Exhibit 148:* Extracts from a letter of John O'Fallon, Captain of the Rifle Regiment, at Green Bay.

*Exhibit 149:* Extracts from "Reminiscences of Life in Territorial Wisconsin" by Elizabeth Theresa Baird, married at Mackinac Island in 1824, and came to Green Bay by schooner Jackson, and tells of a trip from Green Bay to Mackinac in Mackinaw boats, and in 1839 of a trip to Buffalo by a steamer and that in order to do so they had to go all around Lake Michigan, since that was the way the boats went. She tells of being invited to the home of Col. Thomas Jefferson Cram, who was one of the engineers on the survey of the boundary in question.

*Exhibit 150:* Extracts from "Report on the Quality and Condition of Wisconsin Territory, 1831" by Samuel Stambough. Tells of the Death's Door passage and how it received its name, and of the travel from the mineral land region to Green Bay.

*Exhibit 151:* Extracts from "Menominee River. Its Past and Present," by Lewis S. Patrick, 1871, confirming the facts given as to the establishment of the Menominee Harbor.

*Exhibit 153:* Extracts from "Narrative of Alexis Claremont, who was born on Mackinac Island and

went to Green Bay in the autumn of 1820, and later of becoming a Captain in the traffic from the lead mines to Green Bay, until 1836, when he became a mail carrier, and later having worked for Thos. Jefferson Cram who ran the boundary between Wisconsin and Michigan, telling that on the occasion of Cram's first trip he went up the Menominee from Portage trail to Lake Vieux Desert, and then had three days portage from there to the Ontonagon.

*Exhibit 154:* Extracts from "Reminiscences of Early Days on Mackinac Island" by Elizabeth Theresa Baird, describes a trip between Mackinac and Green Bay by Makinaw boat along the eastern coast of Green Bay and along the northern shore of Lake Michigan, naming of Egg Harbor from an egg battle between voyageurs, the portaging of the neck by Eagle Bluff Island because of a storm, camping at Detroit Harbor where they waited favorable opportunity to cross the lake. They commenced the crossing at Rock Island with a favorable wind, but had to row the last part of the way. The description of the next camping place corresponds to the shore of southern Michigan, beyond the Beaver and Fox Island group.

*Exhibit 156:* Journal of an Episcopalian Minister's Tour to Green Bay, 1834, in the "Michigan" built at Detroit, paying a fare of \$25.00 to Green Bay.

There were on the boat several families of settlers. Page 2, says Major F. has examined my Canada map and pronounced it very inaccurate with respect to Mackinac and Green Bay, showing that as late as 1834 this territory was considered by many a part of Canada, his description of entering Green Bay is inaccurate, unless they entered by the Rock Island passage, and his reference to Green Island is reference to St. Martin's Island. He records stopping at Eagle Bay and distinctly mentions passing to the left of Cham-



bers Island. During the following days he records seeing many schooners in the trade to and from Chicago. He then returned by the steamer Sheldon Thompson, passing up the east coast, he says, "we are to stop at Louse Island to accommodate the Collector." He speaks of Strawberry Island as Grape Island, and of Death's Door, here placing Boyer's Bluff at Death's Door incorrectly. He says that while at Pottowatomie or Louse Island, the Captain took the Collector ashore to fix a place for a lighthouse which the Government had ordered, and the missionary went along with the others.

*Exhibit 157:* Extracts from an article entitled "Father Samuel Mazuchelli," who came to Green Bay first in 1831 by trader boat from Mackinac.

He returned to Green Bay again in 1832, after spending the winter in Mackinac, travelling back and forth again that year.

*Exhibit 158:* Extracts from "Life and Works of the Late Rev. Geo. M. Smith" pioneer missionary.

Tells of the trip of Smith in the spring of 1848 as far north as Mackinac, saying the boats hugged the shore. That the only signs of civilization were Grand Haven and Manistee, which indicates that on the trip, after leaving the Door the party directed across the lake.

*Exhibit 159:* Extracts from "Autobiographical Notes" by E. Lakin Brown; shows that he came to Detroit in the steamer Enterprise in 1831.

*Exhibit 160:* Extracts from "Old Keweenaw" by Prof. A. Tenbroeck, dealing with the mode of travel of the voyagers and traders skirting the shore and landing in case of storms.

*Exhibit 161:* Extracts from "Vermont to Lake Superior" in 1845, by George W. Thayer, nephew of Lucius Lyon, whom he says was just closing a term in Congress from the western district of Michigan.

Thayer came to Michigan to join the surveying party of Douglas Houghton, State Geologist of Michigan. The article shows the party proceeded by boat into Lake Superior country on the Illinois steamer belonging to Oliver Newberry, on the General Scott from Mackinac to Sault Ste. Marie, and from Sault Ste. Marie they proceeded in an Indian built Mackinac boat landing to avoid storms, which he describes as a fine sea boat successfully riding out several heavy blows.

*Exhibit 162:* Extracts from "Wisconsin in Three Centuries" by Campbell, showing location of trading posts and that the Menominee, whose villages were located along the Menominee, Oconto and Peshtigo Rivers, traded with Green Bay.

*Exhibit 163:* Extracts from "Western Traveller" by J. Disternell in 1844,—

Describes the steamboat run from Mackinac to Green Bay as passing Beaver Island and the Manitou Islands, which are opposite the mouth of Green Bay, giving the list of steamers "Walk-in-the-Water", "Henry Clay", "Pennsylvania", "Uncle Sam", "Michigan" and "Monroe", stating that the first steamer known to be on Lake Michigan was the Henry Clay, which took Gov. Cass to Green Bay in August 1827 to hold a treaty with the Winnebagoes.

*Exhibit 164:* Extracts from "Illustrated History of Wisconsin" by Tuttle, stating that on September 12, 1822, the schooner Tagnar arrived at Detroit with 12,000 lbs. of lead from Green Bay.

*Exhibit 165:* Extracts from the "Boundaries of Wisconsin" by Reuben Gold Thwaites, stating that as early as 1824, Judge Doty had interested Sen. Benton in creating a territory of Chippewa, later Wisconsin, which proposed to include the entire Upper Peninsula of Michigan.

The effort was renewed in 1830 and in 1834 considerable lobbying was done for a new bill with an eastern boundary, which bill hung fire on account of the Michigan-Ohio dispute. This article repeats the story that the land line in the district between the Montreal and Menominee river was suggested in 1834, by Senator Preston of North Carolina, and again repeats that an old map of Wisconsin then used, erroneously showed a continuous water boundary. It says that the map used by Preston was similar to one drawn by L. Judson, in 1838, and published by the order of the Legislative Assembly of Wisconsin however his statement that Preston had such a map is entirely suppositious. He further states that in 1836, the state Constitution adopted by the people of Michigan in 1835, together with a message from the President on the Michigan-Ohio dispute, was referred to a Select Committee of which Mr. Benton was chairman. That John M. Clayton was Chairman of the Judiciary Committee and a member of the Select Committee, and that this Committee reported on March 22, 1836, a bill to establish the northern boundary of Ohio as Ohio wanted it, and also to erect the Wisconsin territory. He states that while the Wisconsin bill was before the House, Elias Howell of Ohio offered an amendment to make the Wisconsin-Michigan boundary, a line running from the middle of Green Bay to the head of Chocolate river, thence down the head to Lake Super-

ior, which amendment was unsuccessful. He calls attention to the fact that Captain Cram in his report stated that it would be inferred from the language of the Act, that the Lake of the Desert was supposed to be a headwater of and discharge itself into the Montreal river, and further states, that this was found to be untrue and that the lake was found not even being in line with the headwaters of the Montreal and Menominee, and further comments on the fact that Cram said the Montreal river was found to have a course different from what was supposed, and in that respect it had been misrepresented, and repeats Cram's conclusions that it would be impossible to survey a line as described in the Act, saying that Captain Cram showed that there did not exist in nature any continuous natural boundary as had been supposed in the Act of Congress, and as for Lake Vieux Desert, it was found to be many miles northeast of a direct line drawn between the headwaters of the two rivers.

On the 16th. of February, 1842, Gov. Doty sent a message to the Legislature of Wisconsin, saying,

“It is ascertained that a part of the western boundary of the State of Michigan, as prescribed by the Act of Congress of the 15th of June, 1836, is an impossible line, there being no natural boundary as therein described. The Lake of Desert does not discharge its waters into the Montreal river. It having, therefore become necessary to designate a new line, I avail myself of the occasion to present the subject to the notice of the Assembly that such measures as are proposed may be adopted to protect the resolution of the Government of the United States of the boundary which was established in Michigan and Wisconsin in 1805.”

Resolutions were adopted on this message and an attempt was made to influence the action of Congress. The subject was again brought up by Gov. Doty in the message of 1863, following which a Committee report and communications of Congress were made.

Thwaite says probably no state ever adopted a more belligerent tone toward Congress than did Wisconsin in these documents, a portion of which is here quoted.

“The Committee, after expressing its desires to believe that Congress would hasten to make all the atonement in its powers \* \* \* should we be disappointed in its reasonable expectations, we shall continue to occupy the same position that we do with this advantage that we have shown to the world that we have exhibited to the United States Government a disposition in the instance amicably to arrange the difficulties in which we are involved, and we shall then have but to satisfy the civilized communities that we are right in our claims and pretensions to secure their sympathy and kind feeling, if not kind action and we could then safely entrench ourselves behind the ordinance of 1787, fortified by the doctrine well understood in this country, that all political communities have a right to govern themselves in their own way, within their lawful boundaries, *and take for ourselves and our state, the boundaries fixed by that ordinance*, form our state constitution which should be republican, apply for admission into the Union with those boundaries, and if refused, so that we could not be a state in the Union, *we would be a state out of the Union and possess, exercise and enjoy all of the rights, privileges and powers of the sovereign state of Wisconsin*, and if difficulties must ensue, we could appeal

with confidence to the Great Umpire of Nations to adjust them.’’

*Exhibit 166:* Extracts from an article by John J. Sherman, of Marinette, Wisconsin, describing life on the Menominee river, confirming facts heretofore set forth in connection with other exhibits.

*Exhibit 167:* Extracts from “Winter Studies and Summer Rambles”, by Anna Brownell Jameson, describing travel in the district in 1852.

Tells of the Indians travelling to Manitoulin to receive the present distributed by the British Government, fixing the date when the Chippewas drove the Sioux out of this district as between 1726 and 1730.

*Exhibit 168:* Act creating the Michigan-Wisconsin Boundary Commission, appropriating \$5,000.00 for the purpose of investigating the boundary line in dispute, approved June 25, 1919.

*Exhibit 169:* An act making further appropriation for same Commission, approved May 18, 1921.

*Exhibit 170:* Report of the engineers employed by the Michigan-Wisconsin Boundary Commission, on the boundary from the mouth of the Montreal river to the headwaters of the Menominee river.

The report shows an accurate check on the government survey of the west branch of the Montreal river and meander of Island Lake, which checks with the Government plats on file. Reports that the west branch of the Montreal is clearly the main river which the east branch enters at an angle. That Mr. Burt called it the middle river when he surveyed Michigan section lines in 1845. That the west branch flows out of Island Lake, of which an accurate survey is attached to the report, survey being made on the ice. That the lake is a spring fed lake, with shores covered with

hardwood timber. That there are many old dams upon the west branch, that it was evidently used in extensive logging operations; that upon the east branch there is only one old dam being the one now forming a pond used by the Scott and Howe mill. That the survey of the east branch practically tallied with the government survey. That there is about one-tenth the amount of water in Lehman's Creek, called by Captain Cram the Balsam, as there is in the east branch above its junction. That no monument exists marking the end of Cram's survey, although blazes were found of apparent date of 1842 and 1864, the age of the blazes being determined by annual rings grown on trees since the blazes. The engineers were unable to follow the line of Cram's survey, there being several old lines and a number of recent lines blazed by crusiers and hunters. That at the outlet of Pine Lake, which is about six miles south of the place where Cram located his monument is a dam owned by the Lake Superior Power Company. No exact survey of Pine Lake was made because the raise in the level of the water of four feet had obliterated the old shore mark. Engineers did not run the line from Cram's monument to Lake Vieux Desert, or from there to Brule Lake as no monuments exist at either end of said line, and the line could only be re-discovered by occasional blazes.

On the line from the mouth of Brule Lake down Brule River to the junction of the Michigamme, no changes in stream conditions were observed. A separate trip on the Menominee is reported elsewhere.

The watershed area of the east branch of the Mont-real river is 112.78 sq. miles, west branch 96.60 sq. miles. The watershed area of the east branch as given

includes the drainage area of a creek known as Spring Creek, which enters the east branch one mile north of the forks of the east and west branches, and stating that the east branch above the junction of this creek is much smaller than the west branch, dwindling down to the size of a creek in mid-summer. That there is much standing timber in both watersheds, with more in the west branch, which may affect somewhat the steadiness of waterflow in that place.

That October 23, 1920, measurements of the flow in both branches was made; East Branch 62.53 cu. ft. per sec. West Branch, 75.04 cu. ft. per sec. The report further calls attention to the determinations by the Engineering Department of the Wisconsin Railroad Commission, otherwise referred to herein, and concludes that the average flow of the west branch is considerably larger than the flow of the east branch. That the average flow from Island Lake is greater than the flow from Pine Lake. The field notes of surveys are tendered as is also a sketch of the junction of the east and west branches of the Montreal river, which is Plaintiff's Exhibit 171.

*Exhibit 172:* Report of the engineers employed by the Michigan-Wisconsin Boundary Commission upon the channel of the Menominee river with respect to island therein.

The conclusions given in this report are more fully stated in the brief, under the title "The Brule and Menominee Sector" sub-heading. Attached to the report is a sketch of the Sixty Island Group in the Menominee river, and the report concludes that all changes in the channel made by driving operations and the erection of dams, have not in any instance changed the location of the main channel of the stream.



*Exhibit 172:* Consisting of certain photographs illustrating the report of the engineers, Plaintiff's Exhibit 172.

Particular attention is called to Photograph 7 showing the head of an Island known as Waite Island, which is claimed by the State of Wisconsin, which the photograph shows to be actually upon the left or Michigan side of the main channel. This photograph is taken directly down stream at the head of the island which is shown to be washed away to the side of the channel between the island and the Wisconsin shore, indicating that the greater volume of water passes through that channel. Attention is also called to Photograph 3, showing conditions above the island known as Miscauno, and that the channel passing between that island and the Michigan shore is merely a cut-off, the main river passing around the island and between the Wisconsin shore.

*Exhibit 173:* Composite map showing drainage basin of the west branch of the Montreal River, drawn by engineers for Michigan-Wisconsin Boundary Commission, to accompany their report, Exhibit 170.

*Exhibit 174:* Composite map drawn to illustrate the territory in dispute in this case, by engineers for the Michigan-Wisconsin Boundary Commission.

*Exhibit 175:* Is not produced that number being assigned to the map, Exhibit D attached to the Bill of Complaint, which is stipulated in evidence, being a copy of the map which accompanied the second report of Capt. Cram.

*Exhibit 176:* Discharge in second feet of the east branch of the Montreal river, at Ironwood, Michigan, for the year ending September 30, 1925, showing figures stricken from the record as recorded in the testimony of Mr. Christopherson.

*Exhibit 177:* Data for rating table for the east branch of the Montreal river at Ironwood, as computed by Mr. Christopherson.

*Exhibit 178:* Rating curve for the east branch of the Montreal river, at Ironwood, by Mr. Christopherson.

*Exhibit 179:* Photostat copy of the Burr map accompanying Report 476, being the Burr map of March 2, 1836.

*Exhibit 180:* Pages from Barnet's Coast Pilot showing growth of knowledge of navigation of Green Bay.

## APPENDIX 3

PARTIAL LIST OF DEFENDANT'S EXHIBITS  
WHICH SUPPORT PLAINTIFF'S CASE WITH  
COMMENTS ON THEIR ADMISSIBILITY AND  
PROBATIVE VALUE.

## Exhibit 2:

Extracts from an article by Henry Campbell, "Wisconsin in Three Centuries," relating to the journey of one Menard, missionary in 1663, written in 1905, and describing the Portage Trail from Vieux Desert to Keweenaw Bay as a line of early travel.

## Exhibit 3:

Extracts from Malhoit's Journal, 1804-1905, stating that the name Montreal was applied to this river on a map in 1688 and may have originated from a fancied resemblance between the bluffs at the mouth of the Montreal, telling of the suggestion of Senator Preston, of South Carolina, that it be used as a boundary, and erroneously stating that according to the map used by Preston the Montreal river took its rise in Lake Vieux Desert, and further erroneously stating that W. A. Burt, Deputy Surveyor, completed the survey of the Michigan boundary, where he was surveying the new boundary described in the Wisconsin Act.

The second page tells the derivation of the term Vieux Desert or Lake of the Desert, and that this lake on many different maps, was made the source of many different rivers in early days, indicating that the term applied to the lakes at the head of all these streams.

## Exhibit 4:

Northern Wisconsin in 1820, by James D. Doty.

Doty described the old plantation or Vieux Desert as a small lake which discharged into Green Bay. He says the Montreal river is not navigable, but along it is a Portage Trail which crosses the River twice, first at twenty and again at eighty pauses,—it is apparent he was speaking of the west branch as the second crossing of the Montreal river.

Exhibit 5:

Extracts from Report of John Stockton, December 4, 1844, upon the mineral condition between the region of the Montreal river, stating that the river is only navigable for small boats or canoes. Describes a trip down the Menominee river giving erroneous information, etc. Later in the description of the Montreal river, repeats the erroneous idea that the Montreal was supposed to head in Lake Vieux Desert.

Exhibit 6:

Extracts from Executive Document No. 211 on mineral lands in Lake Superior, March 10, 1846, describing a trip up the portage trail along the Montreal. Describes the crossing of the west branch in this language, "This stream we took to be one of the main branches of the Montreal and was represented as heading in several small lakes about ten miles to the southwest. The next day crossed another stream which they called the head stream of the Montreal which was sluggish and had alder bushes, from which crossing it was four miles to Portage Lake." States that this route along the Montreal is sometimes used in going to the "Old Gardens." This article proceeds to describe the old Indian clearings on the Lakes in the district, and of a canoe route from Portage Lake to Lake Vieux Desert, or the "old Planting Grounds."

## Exhibit 7:

Extracts from manuscript volume of the Journal of Douglas Houghton, describing his trip up the Montreal River taken at the time of the second Cram survey. Houghton journeyed up the river by canoe, again meeting Cram at the location of the Cram monument. The journal is very replete in description of the minerals, topography, etc., but has little to say about the conditions relating to the boundary, however, describes the geographic conditions referred to in the statement of facts, to the effect that the west branch broke through the second barrier and not the east branch. Houghton described the point where he met Cram as 100 pauses from Lake Superior on the portage trail, which, considered with the former exhibit indicate that the reference to the Montreal was to the west branch.

Under date of July 27th, he enters in his journal the information evidently given him by Capt. Cram to the effect that the Montreal river from the second range of hills to the point of meeting has a few tributaries, and those of very small size, mostly from the west, and these streams appear to be chiefly drainage of marshes. It thus appears that Houghton at this time was relying upon the information given him by Capt. Cram and did not know of the size or extent of the west branch except at the junction with the east branch. Houghton states that the Gross Pine is the larger of the two streams, Gross Pine and Sabin, and that the lake at the head of this might be considered the head of the Montreal river.

Upon the next page he describes a sketch of the Montreal river system, indicating that he was furnished erroneous information as to the river Sabin, which

shows a heading in a lake. He places upon the map in a position where he saw the mouth of the west branch, Hemlock Creek, but shows it dividing into two small streams, very short, one heading in a lake with the portage trail crossing it, evidently being misinformed upon this subject by Capt. Cram. For three days the party remained at the junction of the Gross Pine and Sabin, engaged in astronomical observations. Lt. Webster, with his party from Lake Vieux Desert, arrived the second day. During this time Houghton was engaged in mineral exploration; the party then proceeded down Portage Lake into the Wisconsin.

Exhibit 8:

Letter from Surveyor General's Office to Commissioner General of the Land Office, enclosing contract of Wm. A. Burt for establishing the boundary.

Exhibit 9:

Contract with Wm. A. Burt, providing for the survey according to the act to Enable the People of Wisconsin Territory to form a Constitution and State Government.

Exhibit 10:

Portion of the annual report of Lucius Lyon in 1847, wherein Lyon reports the completion of the Burt survey, according to the Wisconsin Enabling Act. At this time Lyon was surveyor general of U. S. for this district.

Exhibit 11:

Report of Wm. A. Burt upon this survey.

Exhibit 12:

Report of Geological Survey by Dr. Owen, in 1847-1848. On the third page mentions crossing of the west

fork of the Montreal river, the next paragraph mentioning it as the Montreal river and giving the altitude as 963 ft.; states that the river is about 25 ft. wide and three ft. deep and has been bridged by the American Fur Company. He later speaks of the crossing of the east branch of the Montreal as the Montreal river.

Exhibit 13:

Extract from report of C. T. Jackson, U. S. Geologist, of survey of the Michigan mineral regions. Describes a trip up the Montreal river, Portage trail, in 1849.

Exhibit 14:

Geological report of Foster and Whitney, 1850. The information is evidently based upon the report of Capt. Cram.

Exhibit 15:

Northeastern Boundary of Wisconsin, by Samuel F. Vinton, letter dated 1858, gives the names of the Committee who considered the Michigan Statehood Bill during the session of 1834, as Mr. Clayton of Delaware, Mr. Preston of South Carolina, and others. States that Vinton was deputed by the Ohio delegation to go before the Committee, and that Michigan was there represented by Mr. Lyon. That when the arguments were closing Mr. Preston inquired how much territory lay west of Lake Michigan. The answer was that the country had never been surveyed, but was supposed to contain more than a hundred thousand sq. miles. He remarked that that was an unequal division, and states, he put his finger on a map which hung before him, and drew it along the very line which now forms

the boundary between Michigan and Wisconsin, and remarked that that would be a fair division of the country. That at the commencement of the next session, the same question was again referred to a Committee on the Judiciary, of which Mr. Clayton and Mr. Preston were members, giving the report of that Committee as Vide 3 Vol. Senate Doc. 1st Sess., 24th Cong. No. 211. He then gives the names of the Select Committee to whom was referred the message of the President on the subject, as Mr. Benton, Mr. Clayton, and others, and states that that Committee reported out a bill which became a law, but that they made no report with the bill.

He further states that Lucius Lyon never consented to the bartering away of land on the south for land on the west of Lake Michigan, nor did any of the delegates from Michigan, and that the Upper Peninsula was not given to Michigan in compensation for the loss of the territory on the south, but upon consideration of public policy.

Exhibit 16:

Letter from James Doty to C. Billingham, July 7, 1859, describing the political situation at the time of the admission of Michigan, concluding that "No one supposes a regular bargain was made, but no one who relied upon the inviolability of the terms of the ordinance, at that time, doubted that the leaders in National politics were governed by these views."

Exhibit 18:

Geology of Wisconsin, by Chief Geologist, 1873-1879. On the first page, the Gogogashugun, Indian name given to the west branch, is named as the main tributary of the Montreal, and later states that the river



receives its main branch the Gogogashugun, which it says *is nearly as large a stream as the Upper Montreal itself*. The article deals with the time after the survey of Capt. Cram, and considers the east branch as the Montreal above the confluence.

Exhibit 21:

Memoir of Douglas Houghton, by Alvah Bradish, 1890, showing that Dr. Houghton was lost in Lake Superior, October, 1845, in a small boat, mentions his mineral survey of the northern part of the Upper Peninsula in 1841.

Exhibit 22:

Life of Lucius Lyon, by Hon. George W. Thayer, 1896, showing that he was elected to a seat in the Senate whenever the state might be admitted, in 1835, together with one John Norvell. That Mr. Lyon's term in the Senate expired March 4, 1839, but his successor was not elected until 1840, one S. Porter. Lyon engaged in private enterprises until 1843, when he was again elected to Congress. He was offered the position of Surveyor General of the northwest territory by President Polk in 1845, and was appointed late that fall, holding the position until 1850. The article further quotes from a letter which indicates that Lyon never extended his interest in the Upper Peninsula to the question of the boundary now in dispute.

Exhibit 25:

Annual report of the State Geologist in 1840, describing maps of the Upper Peninsula as very inaccurate, and giving considerable information in regard to the Upper Peninsula, dealing with the boundary at other points than those in dispute.

## Exhibit 26:

Report of the State Geologist in 1842, in which he states that in connection with the duties assigned to him relative to the boundary line between Michigan and Wisconsin, he has been able to keep a very perfect geological description of the district, showing that he was paying no attention to the boundary, but relied upon Capt. Cram upon that subject. In this he was justified since there was no opportunity for him to treat with a delegate to be appointed by Congress who was never appointed.

## Exhibit 29:

The Northeastern Boundary, edited by R. G. Thwaites, repeating the story of the admission of Michigan, the suggestion of the boundary by Preston, and quotes President Buchanan, who was a member of the Senate Judiciary Committee, as making a speech stating that the Upper Peninsula was not given to Michigan as a barter, but solely on consideration of public policy, and giving further benefit of the alleged bargain, as salt wells, land for public buildings, university lands, etc. The articles continue the story of the survey recommendations of Capt. Cram and the conclusion that Congress had been misinformed, and that it will be necessary to define a new line. Tells of the claim by Wisconsin that the Government should compensate that state for the loss of the Upper Peninsula, by improvement of Fox River and Wisconsin River, and quotes the article given in the Michigan exhibit wherein the Wisconsin Legislature threatened independence in the Union. Mr. Thwaites says there are many difficulties with the line as now existing, the lack of jurisdiction over the islands, the indefiniteness

of the southern shore of Lake Brule, and concludes that the line through Green Bay, would probably be held the geographical center of the Bay, tells of the attempt in Constitutional Convention in Madison, in 1846, to claim the entire Upper Peninsula.

Exhibit 30:

Lake Superior Copper Mines, 1846, by John R. St. John, describes the Montreal river, stating it heads in Lake Vieux Desert.

Exhibit 31:

Joint resolution of the General Assembly of Michigan, in 1841, memorializing Congress to settle the boundary question by a new act together with letters of transmission.

Exhibit 33:

Extracts from Debates in the Constitutional Convention of the State of Michigan, showing reliance of the members upon report of Capt. Cram.

Exhibit 34:

Extracts from an article showing the defeat of the proposed Michigan Constitution of 1867.

Exhibit 35:

Extracts from "Life and Time of William A. Burt," by Geo. H. Cannon, showing that the linear surveys of the Upper Peninsula of Michigan were entrusted to Mr. Burt.

Exhibit 37:

Extract from an article on "The Western Boundary" by Anna May Soule, in 1886, repeating the story of the admission of Michigan, with slight and immaterial changes, but still relying upon the erroneous con-

clusion of Capt. Cram that the original line was an impossible one, and suggesting that the fear of the creation of another state between Michigan and Wisconsin might have had something to do with the gift of the Upper Peninsula to Michigan.

Exhibit 38:

The Boundaries of Michigan, by Claude S. Larzelere, 1905, dealing with the acceptance of Michigan of the boundaries prescribed in the Enabling Act, and repeating the conclusion that the original boundary could not be run.

Exhibit 39:

Manual of the Constitutional Convention of Michigan, 1907, adopted in 1909, describing the Michigan boundary, "Thence through the middle of the main channel of the westerly branch of the Montreal river to Island Lake; thence in a direct line to the center of a channel between Middle and South Islands in the Lake of the Desert, (still deeming this lake a necessary point in the boundary because of Cram's report) and repeating the language of the act.

Exhibit 40:

Proceedings of the Constitutional Convention of Michigan, October 22, 1907, showing that the language of the boundary description was drawn up by the Attorney General, because of the fact that there was some question about the northwest boundary, indicating however, that at the time Michigan officials had no knowledge of the facts other than in regard to the east and west branch of the Montreal.

Exhibit 50:

Extract from Journal of an Episcopalian Mission-

ary's Tour to Green Bay in 1834, describes "entering Green Bay with Louse or Pottowatomie Island on our left, Boyer's Bluff ahead, and Green Island just past on our right"; later describes entering Eagle Bay or Harbor. The defendant claims for this that the entrance was made through Rock Island passage, and that the reference to Louse or Pottowatomie meant Rock Island. This might be true, except for the statement "Green Island just passed on our right," in a position with Rock Island to the left there would be no island just passed on the right, and it seems more probable that the entrance was made through the Door. The reference to the island being to Detroit or Plum Island and to Boyer's Bluff, what is now Death's Door Bluff, this latter mistake being very frequent. From the reference to entering Eagle Bay or Harbor it is very evident the trip was made down the Strawberry passage between the Grape Island or Strawberry Island and Wisconsin mainland. He there says that when at Pottowatomie or Louse Island, the Captain took the Collector ashore to fix a site for a lighthouse which, however, was not done as there was not sufficient time. This would indicate that he was not referring to Rock Island, but rather to Washington Island since a man could walk all around Rock Island in a few hours.

Exhibit 51:

Act of 1834 (June 30) making appropriation for a lighthouse on a proper site at Pottowatomie Island, situated at the entrance of Green Bay in Lake Michigan, \$5,000.00. Act of May 9, 1836, for a lighthouse on a proper site, at Pottowatomie Island, at the entrance of Green Bay, in Lake Michigan, in addition to a former

appropriation, made 30th of June, 1834, \$3,000.00. Act of March 3, 1837, Territory of Wisconsin, for erecting a lighthouse at the entrance of Green Bay, \$5,000.00. Act August 14, 1848, for a lighthouse to guide vessels through the passage from Lake Michigan to Green Bay, called Port du Mort, \$3,500.00; for a lighthouse at Port Washington, \$3,500.00. The appropriation of 1848 was undoubtedly spent to build the Pilot Island Lighthouse which went into operation in the spring of 1850. Prior to this there had been appropriated \$13,000.00 under acts calling for the establishment of a lighthouse on a proper site on Pottowatomie Island at the entrance of Green Bay. The only record of the establishment of a light is the establishment of Pottowatomie Light on Rock Island in 1837, the year of the appropriation of the last \$5,000.00. It seems more than likely that at least a portion of the former appropriations were expended in building the old lighthouse on Plum Island of which no record has been found.

Exhibit 52:

Document 41, House of Representatives, Navy Department, dated December 22, 1837. Recommendation No. 31, for erecting a lighthouse at the entrance of Green Bay, \$5,000.00. Under the head of 31, a letter states that a reconnoiter of the islands at the entrance of Green Bay shows a lighthouse already erected on Louse Island. That there is another passage in the Bay about twenty miles to the southward, which is used by vessels bound from Green Bay up Lake Michigan, in which he has been urged to place a light, but he thinks it more important to place a light at the head of Green Bay and into the Fox River. He later

on says that he must call attention to the fact that the commerce and traffic to Green Bay are very great and a lamentable degree of ignorance exists among many navigators in relation to the various obstructions scattered over the Bay. Attached thereto is a letter from John F. White, dated May 20, 1837, stating the safety of navigation requires a lighthouse at the entrance of Green Bay and he thinks Louse Island the proper point, taken in connection with the former letter, it might well be that he thought this a proper point for the lighthouse as it would constitute a warning of the shoals to the east of the island and thus permit a vessel to avoid Rock Island passage rather than to use it.

A later letter dated June 8, 1837, states that there is already a lighthouse at Louse Island at the immediate entrance of Green Bay, and recommends one at Chambers Island.

Another letter, without date, but evidently attached to the same report, says, "I think it advisable to erect a revolving light at the island of———, in the south or Death Door passage, so that it might not be mistaken for the light on Louse Island. The above stated point is the best in my opinion for a light at the entrance of Green Bay. My reasons are these: When in the passage, there are lees to be found from any wind that can blow."

Also a letter dated August 18, 1837, describes a trip from Mackinac to Green Bay, says, "On passing from the straits, you enter Lake Michigan, leaving the Beaver and Fox Islands on the right, and keeping the eastern shore for the distance of sixty miles or so, until you pass the Manitou Island" opposite the entrance of Green Bay; describes the mouth of this Bay

as about thirty miles in width, and thickly studded with islands. There are two principal passages about twenty-five miles apart. In the Northern or Louse Island Passage, there is a lighthouse about going into operation, and will doubtless be a great advantage for vessels coming from or going to Mackinac. The South or Port du Mort Passage is used by those who are bound to or from the upper part of Lake Michigan. "This passage is without a light and I beg leave strongly to recommend that one be placed. It should be a colored light to distinguish it from the one at the northern passage."

He further recommends a survey of the islands at the mouth of Green Bay, and states a voyage up Lake Michigan or Green Bay will still be regarded as one of discovery.

Exhibit 55:

Extracts from an article on the Harbors of Lake Michigan in 1839, showing that the greatest travel on the lake was between Buffalo and Chicago at that time.

Exhibit 56:

Extract from "State of Lighthouses in the District of Mackinac, Michigan, 1840," showing existence of lighthouse on Pottowatomie Island, the year in which built being left blank, as well as most of the information in regard to that light.

Exhibit 59:

Extract from report of the Secretary of War, which indicates that use of the Rock Island passage began about 1862.

Exhibit 60:

Extracts from Carver's Travels, in which he states



Little Detroit is on an island in the communication of Green Bay with Michigan.

Exhibit 61:

Indicates that Carver travelled along the north shore of Lake Michigan from Mackinac Island and across the traverse between the Bay to Lake Michigan from island to island, stopping at Little Detroit in the Door passage, and thence continuing down the east shore of Green Bay to Green Bay settlement.

Exhibit 65:

Extracts from Michigan Pioneer and Historical Collections, indicating that portion of the money appropriated for the purpose of determining a boundary was spent, under the direction of Captain Cram, in determining a ship channel in Green Bay.

Exhibit 79:

The first paragraph indicates that Henry Schoolcraft had coasted the entire Upper Peninsula as early as 1820.

Exhibit 100:

Extracts from the History of Door County in relation to lighthouses. Stating that Pottowatomie light went into operation 1837, and Pilot Island light in 1850, the latter being said to be a very important light. On page 2 of the exhibit, evidently page 260 of the original, it states there is a tradition of a much earlier lighthouse on Plum Island, but no information has been found about this. On the last page it states that the early French explorers found the passage from Lake Michigan to Green Bay to be extremely dangerous, and therefore called it *Porte des Mort*, stating that tradition says the wreck of the Griffin was here.

This statement is in error as to the wreck of the Griffin and as to the derivation of the name, but is correct as to the location of the passage used by early explorers.

Exhibit 305:

Letter of Lucius Lyon to Charles C. Hascall, dated February 21, 1836, states "thence through the Bay to the mouth of the Menominee river, thence up the middle of said river to the fork which rises nearest to the head of La Vieu Desert, thence to the head of said Lake through the same down the Montreal river to Lake Superior, clearly indicating that Lyon considered the Lake of the Desert connecting with the Montreal river.

Exhibit 360:

Letter from Douglas Houghton to John S. Barry stating that no commissioner was appointed to act with Douglas Houghton definitely upon the boundary line.

Exhibit 363:

The last page signed by Henry Schoolcraft, dated November 31, 1822, Sault Ste Marie, discloses his knowledge of Lake Vieux Desert and his grouping of the Indian village on Lake Vieux Desert with the village at the mouth of the Ontonagon.







